



Ontario
Home Builders'
Association

ERO Registry Number: 013-4992

ERO Registry Number: 013-5018

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- Brantford
- Chatham-Kent
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- Thunder Bay
- Waterloo Region
- Windsor Essex



Conservation Authorities Act

2019

OHBA Submission

**Submitted to: Ministry of the Environment, Conservation and Parks
Ministry of Natural Resources and Forestry
May 10, 2019**



Executive Summary

OHBA is pleased to provide both the Ministry of the Environment, Conservation and Parks (MECP) and the Ministry of Natural Resources and Forestry (MNRF) with our recommendations responding to the **Modernizing Conservation Authority operations - Conservation Authorities Act (013-5018)** and the **Focusing Conservation Authority development permits on the protection of people and property (013-4992)** consultations. Under the previous government, OHBA responded to a number of consultations with our recommendations focused on Conservation Authorities, including:

-) Proposed amendments to the *Conservation Authorities Act* as part of Bill (139), *the Building Better Communities and Conserving Watersheds Act*, 2017 (EBR – 013-0561);
-) *Conserving Our Future: Proposed Priorities For Renewal*, 2016 (EBR – 012-7583);
-) *Conservation Authorities Act Review*, 2015 (EBR – 012-4509).

OHBA members from across Ontario have extensive experience working in the 36 Conservation Authority (CA) watersheds and navigating the CA plan review and permitting process. OHBA shares similar broad priorities for modernization and renewal with the MECP and MNRF and appreciates the opportunity to present our views and recommendations to the provincial government. OHBA believes the current consultation represents an important opportunity to strengthen oversight and accountability mechanisms including formalizing the role of other ministries in providing provincial direction and oversight to CAs as well as ensuring greater transparency with respect to services provided to municipalities. It is important that through this review, the provincial government clarify the roles and responsibilities of CAs within the broader provincial legislative framework.

While CAs have an important role in watershed management, OHBA has become increasingly concerned that a number of CAs have extended their reach well beyond a core mandate related to natural hazards (PPS section 3.1) and watershed management. This over-reach is adversely impacting a number of broader provincial goals and objectives, including our members' ability to bring new housing supply to the market. The roles and responsibilities of CAs need to be appropriately balanced with the broader legislative framework that CAs operate in, which allows planning authorities and our members to build strong, healthy communities. OHBA is supportive of the *Made-in-Ontario Environment Plan's* comment that the province will, "work in collaboration with municipalities and stakeholders to ensure that CAs focus and deliver on their core mandate of protecting people and property from flooding and other natural hazards, and conserving natural resources."

OHBA members have an important role to play in protecting and preserving our environment. Through environmental stewardship, building energy efficient new housing, upgrading aging homes, creating transit efficient complete communities and cleaning up brownfields sites, our members are important partners to the government in delivering upon a *Made-in-Ontario Environment Plan*. In this submission, OHBA outlines areas we believe that the province can modernize the CA legislative and regulatory framework to more effectively and efficiently deliver their mandate. It is critical to ensure that CAs are efficiently delivering on their core responsibilities. OHBA is generally supportive of the *Made-in-Ontario Environment Plan* and the *Housing Supply Action Plan* that any reforms to Conservation Authorities must be linked to. OHBA looks forward to working with the government to address the complex issues impacting the housing system and our members ability to deliver the new energy efficient housing supply.



About OHBA

The Ontario Home Builders' Association (OHBA) is the voice of the land development, new housing and professional renovation industries in Ontario. Our association includes over 4,000 member companies organized into a network of 29 local associations across the province, contributing \$62.3 billion to Ontario's economy and generating 513,000 jobs. Our membership is made up of all disciplines involved in land development and residential construction including: builders, professional renovators, trade contractors, manufacturers, consultants and suppliers.

Background (Proposals 013-5018 and 013-4992)

The provincial government launched a consultation in the fall of 2018 seeking feedback from Ontario citizens and businesses on a *Made-in-Ontario Climate Change Plan*. The government had stated at the time, that this would be the first part of a broader approach that will protect clean air and water, encourage conservation and do more to address litter and waste. OHBA responded to the *Made-in-Ontario Climate Change Plan* consultation with a submission in November 2018. The Ministry of the Environment, Conservation and Parks (MECP) subsequently released a proposed *Made-in-Ontario Environment Plan* (ERO 013-4208) to which OHBA responded in January 2019.

The *Conservation Authorities Act*, enables programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario. Under the Act, 36 CAs were created at the request of municipalities. They are governed by municipally appointed representatives to deliver local resource management programs at a watershed scale for both provincial and municipal interests. The MECP is proposing to introduce amendments to the *Conservation Authorities Act*, which if passed, would help CAs focus and deliver on their core mandate, and to improve governance. The MECP is currently proposing to proclaim several un-proclaimed provisions of the *Conservation Authorities Act* associated with CA permitting decisions and regulatory enforcement.

The MNRF is proposing to create a regulation further defining the ability of a CA to regulate prohibited development and other activities for impacts to the control of flooding and other natural hazards. The regulatory proposal states that consolidating and harmonizing the existing 36 individual CA-approved regulations into one MNRF approved regulation will help to ensure consistency in requirements across all CAs while still allowing for local flexibility based on differences in risks posed by flooding and other natural hazards. These regulations are a critical component of Ontario's approach to reducing risks posed by flooding and other natural hazards and strengthening Ontario's resiliency to extreme weather events.

Ensuring that CA permitting decisions focus and deliver on their core mandate of protecting people and property from flooding and other natural hazards is part of the government's *Made-in-Ontario Environment Plan*. The proposed changes will also, as stated by the MNRF, provide the business sector with a clear and consistent regulatory environment in which to operate and will help to make approval processes faster, more predictable and less costly.

OHBA Comments on Proposed Amendments to Conservation Authorities Act

The MECP is proposing to make a number of amendments to the *Conservation Authorities Act*. OHBA has specific comments and recommendations related to each individual proposal below:

1. The MECP is proposing to clearly define the core mandatory programs and services provided by CAs to be: natural hazard protection, conservation and management of conservation authority lands, drinking water source protection (as prescribed under the *Clean Water Act*), and protection of the Lake Simcoe watershed (as prescribed under the *Lake Simcoe Protection Act*)

-) OHBA strongly supports clarifying and confirming the CA mandate as proposed by the MECP. This would provide greater consistency in programs and services and offering some degree of standardization in program and policy development and implementation.
-) OHBA supports an approach in which the province clearly defines the CA core mandate to be prioritized around the achievement of the Natural Hazard policies of the *Provincial Policy Statement (PPS)* and watershed management.
-) Clarification of the CA mandate will allow priorities to be developed that are better positioned to effectively deliver on their core CA functions. By focusing on core responsibilities (and clarifying activities beyond their scope of power), CAs should be able to more efficiently deliver services to municipalities and the development industry within prescribed timelines.
-) In some cases, CAs are engaging in work that is duplicated and redundant to municipalities, other ministries and institutions. OHBA believes that through these proposed amendments, MECP can better align CA mandates with the legislative and planning framework as well as broader provincial public policy objectives and local city building objectives to deliver a one window environmental review. OHBA looks forward to further discussion and dialogue on plan review and responsibilities with respect to ecological issues.
-) OHBA is supportive of the CA role related to natural hazards (PPS section 3.1) and related watershed management activities, as well as the technical expertise they provide in their planning/permitting functions within the scope of the *Conservation Authorities Act* and O.Reg 97/04. However, over the past several years, OHBA has consistently expressed concern that some CAs have expanded their areas of activity beyond their jurisdiction by their own discretion (rather than through a municipal MOU or provincially delegated authority). OHBA recommends that CA roles and responsibilities be scaled back such that they do not extend beyond the scope of the *Conservation Authorities Act*, unless such an additional role in the plan review function is clearly defined in a publicly posted MOU with a municipality or by delegated authority.
-) OHBA is concerned that many CAs are commenting on planning matters outside their scope of review stemming from the lack of clarity in roles and responsibilities. This extension of power results in duplication, a slow approvals process, unnecessary costs and conflict with the development industry and sometimes with the municipality. OHBA is therefore supportive of the direction to create a new regulation outlining roles and responsibilities of CAs in reviewing planning documents for consistency with the PPS, including policies related to natural hazard policies.
-) OHBA has expressed concern that a lack of clear delineation of roles and responsibilities has resulted in jurisdictional crowding with both municipalities and CAs becoming involved in duplicative processes. The legislation and regulations must provide clarity and specify where different agencies become

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involved in the approvals process and strive to eliminate duplication in the review and approval process.

-) Clear delineation is needed between what CA authority is under their Generic Regulation and what their commenting or plan review role is under the *Planning Act*. To provide clarity in the delineation of responsibilities, OHBA recommends that when providing comments on a planning matter, CAs should be required to preface comments clearly indicating that the comments are “advisory” and not as an extension of their legislative, permitting authority. Municipalities should not delay the progression of an application as a result of any “advisory” comments.

2. The MECP is proposing to increase transparency in how CAs levy municipalities for mandatory and non-mandatory programs and services. The MECP is proposing to update the *Conservation Authorities Act*, to conform with modern transparency standards by ensuring that municipalities and CAs review levies for non-core programs after a certain period of time (e.g., 4 to 8 years)

-) Municipalities should not be contracting out programs or services to CAs for which there will be any duplication or overlap. However, if there are any planning and/or technical services that are being contracted out as part of an MOU, they must include timelines and service standards.
-) Given the significant role of municipalities (and their taxpayers) in funding CAs and to enhance accountability for services, programs and operations, OHBA recommends that 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 listed as a separate item on property taxes would increase public awareness and direct accountability for how tax dollars are being allocated.

3. The MECP is proposing to establish a transition period (e.g. 18 to 24 months) and process for CAs and municipalities to enter into agreements for the delivery of non-mandatory programs and services and meet these transparency standards

-) OHBA notes that many CAs are undertaking additional responsibilities and technical services through MOUs with municipalities (or in some cases even without MOUs). There is currently a lack of clarity for evaluating if CAs are operating within the scope of those MOUs or if they are branching out into other areas on their own initiative. Essentially MOUs define the relationships on what a CA does in an advisory capacity with municipalities for plan review and the province should have greater authority to define what should and should not be included in an MOU.
-) OHBA is concerned that some municipalities leverage MOUs and CA commenting roles to slow the planning process. This issue needs to be addressed.
-) OHBA also notes that the industry does not want to move to a system in which applicants are paying of a third party peer review in addition to fees for the CA to review non mandatory programs and services.
-) OHBA recommends that agreements for the delivery of non-mandatory programs and services need to clearly and publicly define the roles and responsibilities of CAs and municipalities to ensure that CAs can be held accountable.
-) OHBA notes that the *Conserving Our Future Document* released by the MNRF under the previous government specifically stated that,

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-“feedback provided during the review indicated that it is not always clear when CAs are fulfilling these roles and responsibilities on behalf of municipalities and that this lack of clarity can serve to perpetuate the view that CAs are exceeding their mandate or creeping into the mandate of others. For example, it may be unclear if comments provided by an authority on a planning matter are advisory in nature through their role as a local public commenting body, if they are issued on behalf of a municipality as part of a service agreement and must be addressed, or some combination of the two.”

) OHBA remains concerned by this specific issue. Municipal staff often do not know if comments are advisory in nature, therefore CAs should either not be permitted to make these comments in the first place or must be required to explicitly state that the comments are advisory in nature only. In circumstances where CAs are providing non-core services to municipalities, their comments and recommendations should be aligned with the PPS and the municipality’s OP. This is a key transparency issue for OHBA members that must be addressed through the current consultation.

4. The MECP is proposing to enable the Minister to appoint an investigator to investigate or undertake an audit and report on a CA

) OHBA notes that the MECP currently has limited power to enforce compliance with the *Conservation Authorities Act*. OHBA is supportive of increasing direct oversight and monitoring by MECP to enhance accountability, consistency and transparency in terms of governance as well as roles and responsibilities as was recommended by the Auditor General. OHBA is supportive of the proposal to enable the Minister to appoint an investigator, but is unclear if this action to update the authority of MECP includes the power to review CA programs, services and operations. OHBA would support a broad range and scope of investigative powers.

5. The MECP is proposing to clarify that the duty of CA board members is to act in the best interest of the CA, similar to not-for profit organizations.

-) OHBA is generally supportive of this specific objective.
-) OHBA would further support updating the appointment process and requirements.
-) OHBA would further support term limits for appointments.

OHBA Comments on Proclaiming provision of the Conservation Authorities Act

The MECP is also proposing to proclaim a number previously of un-proclaimed provisions of the *Conservation Authorities Act*. OHBA is generally supportive of these measures and has a number of specific comments and recommendations:

Fees for programs and services:

-) While municipalities provide significant funding to CAs through levies (\$140 million in 2015), they should not be permitted to utilize Development Charges for this purpose.
-) The MECP should enhance accountability and mandate that CAs establish fair and reasonable rules with respect to development application review fees commensurate to the services provided and that they be appealable to OMB/LPA, similar to that of any *Planning Act* fee.

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-) In a previous submission, OHBA expressed concern regarding 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:
 - o Parity with neighbouring CAs to promote consistency;
 - o Prevention of duplicative fees charged by local municipalities, and other agencies and ministries for related services;
 - o Consistency in fee schedules with local municipalities, and other agencies and ministries for related services; and
 - o Fees shall be reflective of the complexity of the application and level of effort required to administer the application.
-) OHBA is supportive of updating the *Policies and Procedures for Charging Conservation Authority Fees* to provide CAs with additional guidance on the development of fee schedules;
-) OHBA recommends that the province should legislate a consistent fee schedule (Sec 21.2) with clearly defined service categories that can be applied by all CAs (individual CA fees would be differentiated, but categories and definitions would be consistent). OHBA is therefore supportive of requiring CAs to develop a fee administration policy that includes a fee schedule, a process for public notification about the establishment of or any proposed changes to fee schedules, and a clearly defined review and revision process.
-) OHBA supports requiring fee administration policies to include a timeframe for under-taking a review of the fee administration policy at a frequency to be determined by the CA and participating municipalities. CAs should be open about the financial inputs and calculations used to create fee schedules. This should include a "background study" process similar to the Development Charges By-Law review process as 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.
-) OHBA is supportive of a process for appeals for fees that are proposed or in place, and recommends that the LPAT/OMB be that appeals body.

Transparency and accountability:

-) OHBA strongly supports modernizing the *Conservation Authorities Act* to enhance accountability mechanisms within the legislation and through future regulations, including increasing the transparency and oversight of CA decision making.
-) OHBA recommends that as a Best Management Practice, that CAs should be required to produce reports that include:
 - o Financial statements;
 - o Governance priorities and policy/service priorities that a CA is focused on;
 - o Standardized review and response timelines for permitting functions and application processes as well as reporting on the effectiveness of achieving those reasonable review timelines;
 - o Municipal MOUs and delegated authorities;
 - o Revenues and expenses associated with MOUs and Delegated Authorities;
 - o Fees charged for planning and permitting reviews;
 - o Board Code of Conduct;
 - o Annual reports should make specific reference to the guidelines and performance monitoring policies set out in *Policies and Procedures for Conservation Authority Plan Review and Permitting Activities*.



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-) OHBA recommends that CAs be required to publish a policy that outlines details on regulatory requirements and permit application and review procedures including service delivery standards.

Approval of projects with provincial grants:

-) OHBA has no specific comments.

Recovery of capital costs and operating expenses from municipalities (municipal levies):

-) For clarity, OHBA supports modernizing the language referencing the kinds of costs to be apportioned among participating municipalities as “capital costs” and “operating expenses”;
-) To enhance accountability, OHBA is supportive of enabling the Province to make regulations governing how capital costs and operating costs are apportioned by CAs;

Regulation of areas over which CAs have jurisdiction (e.g., development permitting):

- OHBA is supportive of the province clarifying CA roles and responsibilities with respect to development permitting;
- OHBA seeks clarification on the management of wide shallow and unnatural (historically modified or created hazard lands). Where there is a wide shallow floodplain in an agricultural field with minimal depth of flooding or where there are unnatural floodplains caused by historical obstructions (bridges and roadways) such areas should be allowed to be modified/returned to regular conditions.
- OHBA recommends a refocusing of priorities on managing hazards and eliminating duplication by removing the ability of CAs to consider environmental aspects through the regulatory function, including:
 - Natural Heritage (Section 2.1 of the PPS) impacts to the ecological function of:
 - Significant wetlands Canadian Shield north of Ecoregions 5E, 6E and 7E (MNRF jurisdiction);
 - un-evaluated wetlands and non-significant wetlands (municipal jurisdiction)
 - Significant woodlands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River) (municipal jurisdiction);
 - Un-evaluated woodlands and non-significant woodlands (municipal jurisdiction);
 - Significant valleylands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)¹ (municipal jurisdiction);
 - Un-evaluated valleylands and non-significant valleylands;
 - Significant wildlife habitat (municipal jurisdiction);
 - Significant areas of natural and scientific interest (municipal jurisdiction); Coastal wetlands in Ecoregions 5E, 6E and 7E¹ that are not subject to policy 2.1.4(b);
 - aquatic habitat (e.g. degraded habitat, loss of fish passage, timing windows, etc.);
 - Ecological integrity of shorelines (e.g. habitat for migratory species);
 - Ecological Offsetting Requirements:
 - Wetlands;
 - Woodlands;
 - Significant Wildlife Habitat
 - Natural Feature buffer planting prescriptions;
 - Invasive Species monitoring and management

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- Valley Land integrity/ function (e.g. limiting regrading valley slope, development within the valley/ valley floors, etc.);
- OHBA is concerned by the lack of legislated service delivery timelines. To ensure an efficient and effective planning process and certainty for businesses, the province should require and regulate in legislation service delivery timelines for permitting functions, similar to what is required by the *Planning Act*.
- OHBA notes that the lack of timelines means that currently if there is no decision, then there is no ability to appeal. OHBA notes that on occasions there are political reasons for which decisions are not rendered (and thus no appeal rights). Timelines must be legislated to enable appeals.
- OHBA is supportive of outlining the scope of provincially mandated roles and responsibilities in regulation, which will serve to embed provincial expectations for the delivery of these programs and services into the CA Act legislative framework.
- When reviewing a technical application, the CA's mandate should be limited to a review with respect to consistency to their policies and not a technical review of the actual calculations or modelling data of the engineers, planners or scientist's. The CA is not stamping the drawings, nor do they typically assume the works or take ownership of the subject land (i.e. SWM ponds, valleylands, woodlots etc.).
- Once the approval authority (municipality) reviews and approves a planning application (and the CA has signed off on it), the CA should not hold off or deny the section 28 permit.
- OHBA is 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 CAs becoming inundated with circulations for minor items they shouldn't be reviewing. OHBA suggests that higher quality screening maps could assist in reducing duplication and unnecessary reviews as CAs should not be circulated on applications outside of the O.Reg 97/04 area (or future replacement of this Reg).
- OHBA has previously expressed concern that in addition to duplication, "mandate creep" and "jurisdictional crowding" can also lead to slightly different or contradictory opinions and comments being provided on the same application that cannot be reconciled by the applicant. Greater clarity in legislative roles and responsibilities should assist with the issue of escalating approvals (multiple sequential approvals) and contradictory opinions that simply paralyze the approvals process when multiple agencies are involved. CA involvement in planning and permitting should not extend beyond the scope of their provincial mandate and municipal agreements.
- Lastly, OHBA notes that any refocusing of the scope of CAs towards their core mandate and away from ecological issues will not result in any gaps in terms of environmental protections. A scoping of CA authority does not reduce the strong protections to the environment afforded by other legislation and regulations that appropriately cover and protect the environment. OHBA supports appropriate environmental protection and clearly delineated responsibilities.

OHBA Comments on Proposed regulation that would replace O. Reg 97/04

The MNRF is proposing a regulation that outlines how CAs permit development and other activity for impacts to natural hazards and public safety. The proposed regulation is intended to make rules for development in hazardous areas more consistent to support faster, more predictable and less costly approvals. OHBA has a number of specific comments and recommendations with respect to the proposal outlined below:

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**Update definitions for key regulatory terms to better align with other provincial policy, including:
“wetland”, “watercourse” and “pollution”:**

-) OHBA is supportive of consistent definitions that align across Ministries.
 -) OHBA recommends the definition of “pollution” be refocused towards its original intent from the PPS on sedimentation and hazardous material.
 -) OHBA recommends a “wetland” definition that: clarifies whether it is seasonally or permanently covered by shallow water or has a water table close to or at its surface; is connected to a surface watercourse; has hydric soils; has hydrophytic or water tolerant plants. A “wetland” should absolutely NOT include a wet area in an agricultural field which is occasionally wet but used for agricultural purposes. OHBA , suggest that the Canadian Wetland Classification System definition for wetland is used:

“Land that is saturated with water long enough to promote wetland or aquatic processes as indicated by poorly drained soil, hydrophytic vegetation **and** various kinds of biological activity which are adapted to a wet environment (National Wetlands Working Group 1988).
 -) OHBA supports that the “interference with a wetland” by re-focused on the hydrological function of a wetland rather than its ecological function. To that end, OHBA supports that CAs only be able to regulate activities within 30 m of a wetland, regardless of its size or significance, as the area up to (and potentially beyond) 120 m considers ecological function.
 -) OHBA recommends defining “watercourse” to mean a defined channel with a bed and banks or sides in which a flow of water regularly or continuously flows. It should not mean, as currently is often the interpretation, any identifiable depression in the ground in which a flow of water regularly or continuously flows, or minor, poorly defined agricultural drainage features that may convey flows only seasonally . OHBA further recommends additional clarity that a strict focus be imposed where interference on impacts of the hydrological function of the watercourse are considered (i.e. ability to pass flows and minimize erosion). The ecological and natural features of a watercourse should NOT be considered as environmental issues should be out of scope of the hazard management focus of CAs.
- 1) Monitoring wetlands to determine their hydrologic function is costly and lengthy (1-3 years) and should only be done for wetlands that are being retained AND that trigger monitoring based on a risk evaluation (See comment no. 2). The Conservation Authority Act changes should stipulate that CA’s hydrologic function role for wetlands is only for those that will be retained post-development (this would be determined through the planning process, conformity with municipal OP natural heritage policies)
 - 2) Criteria (i.e., TRCA wetland water balance risk evaluation or suitable alternative) to identify which retained wetlands need to be monitored to understand their hydrologic function is needed. Not all retained wetlands need to have hydrologic function monitoring, as their risk for impacts to hydrologic function may be low (i.e., majority of catchment within retained natural area).
 - 3) The role of the CA, under the revised *Conservation Authority Act* for providing input into the wetland hydroperiod monitoring plans (baseline, during construction, performance) and reviewing the results of these survey periods needs to be clearly defined. It is often not feasible (treed swamp) or even desirable (if wetland is degraded pre-development) to maintain pre-development hydrologic function, post-development. Through the planning process (following the municipal OP natural heritage policies) opportunities for ecological net gain, which could include increasing/decreasing water or removing degraded wetland and replacing with other ecological net gain may be approved through the planning process.

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-) It is also recommended that the definition of Headwater Drainage Features (HDFs) be clearly defined. HDFs are ephemeral and intermittent features that do not/ should not meet the definition of a watercourse within CA Regulated Areas. Making a clear distinction between watercourses and HDFs will help to avoid overlap of provincial policies and guidelines and maintain consistency in CA review.

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

-) OHBA is supportive of clearer definitions to enable consistent application of rules and regulations and to provide clarity for business operations in Ontario. The lack of definition for the term “conservation of land” has been one of the most significant issues in the CA mandate creep. OHBA strongly recommends that the “conservation of land” definition must be refocused on erosion, slope stability and hydrologic functions of wetlands (ability to attenuate flooding and erosion) and watercourses. It should NOT focus on ecological impacts (i.e. loss of natural areas, impacts to wildlife and species at risk).

Reduce regulatory restrictions between 30m and 120m of a wetland and where a hydrological connection has been severed:

-) OHBA is supportive of the approach to reduce regulatory restrictions as proposed for all wetlands.
-) OHBA would further recommend that there should be a refocus of ‘interference’ on impacts to the hydrological function of a wetland (i.e. ability to attenuate flooding and erosion) and NOT on the ecological and natural features of wetlands.

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

-) OHBA is supportive of the proposal for certain alterations to watercourses being exempt from permitting requirements such as repairs to existing municipal drains (provided they are undertaken in accordance with the *Drainage Act* and CA Act protocol).
-) Individual CAs should have the discretion to provide additional exemptions for certain activities carried out within specific areas of a watershed, provided they are carried out in accordance with a rules-in-regulation approach. Furthermore, smaller structures should be exempt.

Allow CAs to further exempt low-risk development activities from requiring a permit provided in accordance with CA policies:

-) OHBA is supportive of enabling CAs to establish further exemptions for activities carried out in accordance with rules in regulation. OHBA notes that a rules-in-regulation approach has been effectively implemented by the MNRF and the MECP for certain low-risk activities (e.g. Permits To Take Water);
-) OHBA continues to recommend that CAs be removed from the Site Plan Review and Consent processes. Site Plan Review should be limited to the municipality since the CA has already had the opportunity to review and comment on the Plan of Subdivision earlier in the approvals process.

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-) To eliminate duplication OHBA would recommend the elimination of the need for permits under Conservation Authority regulation where CA's are commenting and having their concerns addressed through the municipal review process. (ie; where the authority is required to provide clearance on a plan of subdivision prior to registration).

Require CAs to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions:

-) CAs should ensure that adequate staffing resources are provided consistent with their mandate or they should reduce the scope of their activities to ensure adequate customer service. The policies within municipal Ops must be clear as to when the CA is to be consulted and when they are not (i.e. screening system) to avoid burdening the CA with applications not within their mandate.

Require CAs to notify the public of changes to mapped regulated areas such as floodplains or wetland boundaries:

-) OHBA is supportive of enhanced transparency related to the mapping of flood hazards.
-) With respect to mapping – OHBA recommends:
 - o Maps should be prepared with the most up-to-date information at the time;
 - o If an area has not been delineated to an acceptable standard of technical accuracy, such maps should still depict an area where development or other activities may be prohibited as the “Regulatory Screening Area”. This would improve transparency.
 - o Text description of regulated areas found within the Regulation should supersede any mapping.
 - o If a CA proposes any significant changes to mapping of the “Regulatory Limit” or “Regulatory Screening Area” (e.g., beyond any minor modifications or corrections) they shall provide notice to the public, including direct notice to all impacted landowners, and consider public comments prior to making any decisions regarding the proposed mapping changes.
 - o Where new mapping impacts existing plan designations, land owner, property rights should be respected with opportunities for mitigation of hazard measures.
 - o New Floodplain mapping updates and modelling updates which adds existing development into the floodplain should respect the designation of this existing development while allowing for creative opportunities to remediate hazard conditions through future expansions and additions to the existing development.

Require CAs to establish, monitor and report on service delivery standards including requirements and timelines for determination of complete applications and timelines for permit decisions:

-) OHBA is concerned that there is a lack of oversight in the current system that allows some CAs to operate under unreasonably long timelines and without an appropriate appeal mechanism.
-) OHBA is supportive of passing a new regulation under a modernized *Conservation Authorities Act* that includes reasonable permit approval and review timelines that require CAs to be accountable for the services they deliver. Such a regulation should include:
 - o Details with respect to complete application requirements;
 - o Timelines for confirming complete application requirements following pre-consultation;

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- Timelines for notifying applicants whether a permit application is deemed complete
 - Timelines for a decision on a permit application (following the receipt of a complete application);
 - A process for an administrative review or hearing if timelines are not met; and,
 - Additional technical details on regulatory requirements and permit application and review procedures.
-) CA permitting functions should be better integrated with municipal approvals (aligned with *Planning Act* timelines).
-) Appeals to CA permitting decisions are currently heard by the Mining and Lands Commissioner and not integrated with other *Planning Act* appeals that are heard by the LPAT/OMB, thereby causing disjointed and often competing land use decisions. All appeals of both *Planning Act*, and, *Conservation Authorities Act* matters should be adjudicated by the LPAT/OMB or at minimum should be heard jointly.
-) OHBA recommends that CAs be able to delegate the authority to issue permits to staff, rather than CA boards.
-) In instances where a project overlaps with the boundaries of multiple CAs, OHBA is supportive of a process that would permit CAs to enter into an agreement such that one CA takes the lead on behalf of the other CAs, with the end result being that multiple permits are not required from multiple CAs for one project. In the absence of this process, OHBA supports the establishments of a centralized permit process, with the end result being that multiple permits are not required from multiple CAs for one project.
-) OHBA is concerned by the lack of accountability associated with CA permit refusals and non-decisions. To enhance accountability, OHBA recommends that Section 28(15) of the *Conservation Authorities Act* be amended to include standardized timelines and the ability to appeal non-decisions on permit approvals.
-) OHBA recommends that the maximum validity for which a permit can be issued by the CA be extended to 60 months (5-years) prior to expiring.
-) There should also be prescribed standards and timelines for plan review functions provided to a municipality under an MOU, similar to those above for permit applications.

Other Issues

-) OHBA is concerned that the provincial government has not included OHBA's recommendation in the current package of reforms to enhance accountability for planning and permitting functions through an independent appeal process (OMB/LPAT) in the currently proposed legislative and regulatory amendments. Under the current system, CA permit appeals typically go back to the CA Board, who are too close to the staff at the CA to truly be independent. Those decisions can only be overturned by the Minister, who very rarely gets involved in overturning a refusal to issue a permit. OHBA therefore continues to recommend that the province implement an independent third-party appeal to the OMB/LPAT for CA permitting. This will create more certainty and resolve disputes more efficiently while also creating more integrated and timely decisions.
-) While not articulated in this consultation, it is important that the provincial government develop a plan review regulation to clarify roles, responsibilities and scope.

Modernizing Conservation Authorities Act

-) OHBA looks forward to future discussion with the MECP to ensure there is no additional future duplication through plan review through the MOUs with CAs and the various roles and functions of other Ministries.
-) Where CAs are providing conditions on planning approvals and where they are involved in a review role and function, there should be no additional CA permits required.
-) It is recommended that the roles and responsibilities for defining the limits of natural features, such as watercourses, wetlands, and valleylands, be included in proposed updates to the CA Act. Further, it is recommended that a consistent guideline for defining these features be developed by the province for use by all CAs.
-) Some CAs have developed (and others are in the process of developing) guidelines for determining ecological offsetting requirements for the removal or loss of natural features such as woodlands, meadows, thickets and wetlands. As woodlands, meadows, and thickets are not features that CAs regulate, CAs should not be developing or enforcing offsetting guidelines for these features. It is worth noting that in some cases, where municipal tree by-laws exist and are enforced by the Municipality, some CAs are requiring offsetting for loss of trees (including individual trees) that are in excess of the Municipal by-law requirements. With respect to offsetting guidelines for wetlands, ratios consider ecological impacts associated with the removal of the feature. If the definition of “interference” as it pertains to wetlands will focus on a wetland’s hydrologic function (i.e. its ability to attenuate flooding and erosion), the offsetting requirements that are currently established are not appropriate. Further, stormwater management practices can mitigate for impacts to a wetland’s hydrologic function without the need to compensate for wetland removal by wetland replacement. It is recommended that the province develop an offsetting guideline for use by all CAs that focuses on loss to a wetland’s hydrological function only.

Conclusion

OHBA appreciates the opportunity to provide the provincial government with our feedback and recommendations and we share similar broad priorities with MECP and MNRF for modernization and renewal. OHBA supports ongoing discussions with the MECP with respect to Plan Review, future regulations and disentanglement of roles and responsibilities. OHBA believes the current consultation represents an important opportunity to strengthen oversight and accountability mechanisms including formalizing the role of other ministries in providing provincial direction and oversight to CAs as well as ensuring greater transparency with respect to services provided to municipalities. OHBA notes further consultation is required for future regulations and suggests the MECP meet with all stakeholders to finalize a template for scoping of MOU’s. It is important that through this review, the provincial government clarify the roles and responsibilities of CAs within the broader provincial legislative framework to protect the environment, support housing supply and ensure that Ontario is Open for Business.