



**Ontario**  
Home Builders'  
Association

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**ERO Number: 019-6141 | Legislative and regulatory proposals affecting Conservation Authorities to support the Housing Supply Action Plan 3.0**

**The Ontario Home Builders' Association (OHBA)**

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

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

**Industry Recommends a Cautious Approach to Major Systems Change**

Conservation Authorities play an important role in the land development and planning process to protect people and property from hazards and flooding. A key recommendation in this submission is to exercise caution and for the government to call a meeting of the multi-stakeholder Conservation Authorities Working Group. Our association supports the provincial objective to clarify roles and responsibilities to streamline the approvals process to support the building of more homes faster. However, shifting some aspects of technical approvals to municipalities has the potential to increase costs and slow the process down.

We support the focus on increasing housing supply in complete communities that are environmentally responsible and protected from floods and natural hazards and agree there is a need for systemic reform. We note that a complete systems overhaul runs the risk of slowing the approvals process if municipalities are given responsibilities for which they do not have expertise and for which local political considerations could impact technical decision making. We recommend that the provincial government reconvene the multi-stakeholder Conservation Authorities Working Group with a clear objective to streamline processes while considering roles and responsibilities of "who does what".

Furthermore, a second broad recommendation is to consider right sizing and re-organizing some Conservation Authorities to ensure that adequate resources are available to deliver core programs. Substantial efficiencies may be gained by amalgamating some small conservation authorities and ensuring others are not over-resourced to deliver core programs. Our industry supports a continued role for watershed-based planning to

protect people and property from hazards and flooding. However, consolidation between some of the smaller Conservation Authorities and watersheds may create administrative efficiencies and allow for consolidation of staffing resources while supporting retaining appropriate technical experts that may not have realistically been possible with some smaller Conservation Authorities.

### **Previous Industry Positions on Conservation Authority Roles and Responsibilities**

OHBA with the support of 27 local associations including BILD, GOHBA and WEHBA have provided the current and previous governments with significant recommendations to modernize the operations of Conservation Authorities and to scope their roles and responsibilities. Our major recommendations through formal submissions on Conservation Authorities, include:

- Regulatory Proposals under the Conservation Authorities Act - 2021 ERO Registry: 019-2986
- Modernizing Conservation Authorities Act – 2019 ERO Registry Numbers: 013-4992 and 013-5018;
- 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).

Our associations were broadly supportive of recent changes designed to improve the governance, oversight and accountability of Conservation Authorities (CA's), while respecting taxpayer dollars by giving municipalities more say over the Conservation Authority programs and services they pay for. OHBA members from across Ontario have extensive experience working in the 36 CA watersheds and navigating the CA plan review and permitting process. Our associations share similar broad priorities for modernization and renewal with the provincial government and appreciates the opportunity to present our recommendations through the ERO 019-6141 posting. OHBA believes the current consultation represents an important opportunity to strengthen accountability mechanisms while properly scoping roles and responsibilities to core functions of protecting people and property from hazards and flooding.

### **Industry Recommendations: Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario (legislative changes)**

The OHBA is supportive of the stated provincial objective to focus development approvals under the *Conservation Authorities Act* on the risk of natural hazards, including flooding. With respect to the proposed legislative changes to the *Conservation Authorities Act*, OHBA offers the following comments/observations:

- While the OHBA is generally supportive of the proposal to “enable the exemption of development authorized under the *Planning Act* from requiring a permit under the *Conservation Authorities Act* in municipalities set out in regulation, where certain conditions are met as set out in regulation”. There are not currently enough details within the ERO 019-6141 posting to provide technical comments regarding the conditions within a plan regulation. OHBA brings forward the following considerations:
  - Where will this apply and how will it be administered?
  - Will CA sign-off be required through a development agreement?
  - Will that sign-off simply replace the permit requirements?
  - The approach of replacing the current permit process with approvals through the *Planning Act* process (i.e. subdivision agreements/registration) would help, but there are very often interim approvals required ahead of the final subdivision agreement execution or registration. If the permit process is replaced, consideration will also be required to extend that replacement with other components such as Site Alteration permits or Pre-Servicing agreements from the municipality.

- OHBA notes that technical review is still required and many municipalities rely on CA's who have technical expertise to undertake the environmental component of the review.
- OHBA strongly supports scoping roles and responsibilities of Conservation Authorities to the core functions of protecting people and property from hazards and flooding. As such OHBA supports the proposal to remove the terms "conservation of land" and "pollution" and add the terms "unstable soils and bedrock" while also maintaining "flooding", "erosion", and "dynamic beaches" to the matters considered in permit decisions. Proving that an activity is not likely to affect the "pollution or the conservation of land" was too subjective and was often difficult to assess. The test of impact to "unstable soil or bedrock" is much more reasonable.
- OHBA supports expedited service delivery review timelines and the proposal to update the timeframe after which an applicant may appeal the failure of the Conservation Authority to issue a permit to the Ontario Land Tribunal from 120 days to 90 days. OHBA has a number of specific comments with respect to reducing the time to response time for Section 28 permits (from 120 to 90 days) as follows:
  - We recognize that a shorter review time period places additional pressure on limited staff resources, however, should requirements for permitting be scoped as proposed then there should be internal efficiencies to improve service delivery.
  - Subsection 28.1 (22) changes would be consistent with the *Planning Act*; from the date of submission of a complete application.
  - It should be noted that "timelines for a decision on a permit application following the submission of a complete application" is also an item proposed to be included in the individual Conservation Authority policies. This should not be the case; we strongly recommend 90 days across the board, required by the Act.
  - OHBA therefore recommends language be added with regards to the time allowed to deem an application complete; the *Planning Act* is 30 days.
    - *Planning Act* Examples:
      - For OPA's Subsection 22 (6.1) Response re completeness of request: *Within 30 days after the person or public body that requests the amendment pays any fee under section 69, the council or planning board shall notify the person or public body that the information and material required under subsections (4) and (5), if any, have been provided, or that they have not been provided, as the case may be. 2006, c. 23, s. 11 (4).*
      - For ZBA's Subsection 34 (10.4) Response re completeness of request: *Within 30 days after the person or public body that makes the application for an amendment to a by-law pays any fee under section 69, the council shall notify the person or public body that the information and material required under subsections (10.1) and (10.2), if any, have been provided, or that they have not been provided, as the case may be. 2006, c. 23, s. 15 (4).*
      - For Site Plan's Subsection 41 (3.6) Response re completeness of request: *Within 30 days after the applicant pays any fee under section 69, the municipality shall notify the person or public body that the plans and drawings referred to in subsection (4) and the information and material required under subsections (3.3) and (3.4), if any, have been provided, or that they have not been provided, as the case may be. 2022, c. 12, Sched. 5, s. 7 (1).*
  - OHBA recommends the following addition to *Conservation Authorities Act* Subsection 28.1 (3.1) Response re completeness of request: *Within 30 days after a person makes an application for a permit under this section, the authority shall notify the person that the information and material required by the regulations, if any, have been provided, or that they have not been provided, as the case may be.*
  - OHBA is concerned that based on the regulatory consultation posting (ERO 019-2927) that the review timeframe would be prescribed by the individual CA's. We strongly disagree with

this approach. The purpose of this exercise must be to standardize the approach across the 36 different Conservation Authorities.

- OHBA recognizes that the new *Community Infrastructure and Housing Accelerator* tool is intended to be used in exceptional circumstances to accelerate priority projects and would not form a regular component of the planning approvals process for the vast majority of projects. OHBA is therefore supportive of the proposal to require Conservation Authorities to issue permits for projects subject to a *Community Infrastructure and Housing Accelerator* order under section 34.1 of the *Planning Act* and allowing the Minister to review and amend any conditions attached to those permits.
- OHBA notes that for permits issued where a Minister's Zoning Order has been made under the *Planning Act* (section 34.1 or 47) that ERO 019-6141 proposes to extend the existing regulation making authority of the Minister to prescribe conditions on a permit issued by a Conservation Authority. OHBA is supportive of the proposed extension of regulation making authority for priority projects within the provincial interest and the proposal to enable the Minister to also prescribe limits on what conditions a Conservation Authority may include
- OHBA also supports specifying where the Minister has made a regulation allowing development to begin prior to an ecological compensation agreement being signed and has set a date by which it must be signed. OHBA notes that it is important this occur in a transparent manner and that development proponents remain accountable in delivering on their commitments for fair and practical ecological compensation agreements. OHBA recommends consideration for an appeal mechanism to ensure a fair and balanced approach from the Ministry.

#### **Industry Recommendations: Focusing Conservation Authorities' role in review of development related proposals and applications (comments, appeals)**

The OHBA through our provincial association, the OHBA has consistently supported greater transparency and accountability while scoping roles and responsibilities of Conservation Authorities to the core functions of protecting people and property from hazards and flooding. As such, the OHBA is supportive of the MNRF proposal to amend the *Conservation Authorities Act* and to establish a new Minister's regulation to focus Conservation Authorities' role when reviewing and commenting on proposals, applications, or other matters related to development and land use planning.

The OHBA generally supports the proposal to eliminate CA's ability to comment/review applications for "prescribed acts" (changes to subsection 21.1.1 (1.1) and 21.1.2 (1.1)). Overall, we agree with the scoping of roles and responsibilities, however, there may be limited circumstances where an MOU may be appropriate where technical expertise is warranted. OHBA is therefore cautious regarding the policy that would prevent them from executing an agreement with a municipality to provide those services [21.1.1 (1.1)] and would prevent them as commenting/reviewing as an "other program or service" [21.1.2 (1.1)].

The issue of concern has been that the line between "commenting" and "permitting" has become blurred. Scoping the jurisdiction to matters related to protection of people and property from hazards and flooding addresses this issue. Many municipalities do not have in-house capabilities with respect to certain natural heritage matters. Allowing CA's to provide technical expertise to municipalities through agreements in certain limited circumstances could allow cost effective delivery of services without perpetuating the uncertainty regarding whether a permit is required or may be withheld. If an agreement is in place (under limited circumstances) for a Conservation Authorities to support a municipality in a technical consulting role, their engagement must be defined/determined at the pre-submission consultation stage of the planning process to ensure that they follow the *Planning Act* timelines and to avoid duplication of responsibilities. OHBA notes that *if* MOUs with municipalities to comment/review applications for "prescribed acts" are in fact eliminated, that we would recommend that they be phased out over a 12-month period to allow lower tier municipalities to determine how to adjust the absence of co-dependent relationships with Conservation Authorities.

OHBA also notes that CAs would still have the ability to regulate per 21.1 (1) 1. i. (programs and services related to the risks of natural hazards” and iv. (programs and services related to the authority’s duties, functions and responsibilities under an Act prescribed by regulations). We highlight this point as it is important to be crystal clear that CAs can still regulate alteration/interference/activity in regulated areas. OHBA is unclear and seeks clarification that Subsection 7 “Plan review, comments” (O.Reg. 686/21) will in fact be eliminated.

The new regulation proposes to prescribe the following Acts under which a conservation authority could not perform this review and commenting role as a “municipal” or “other” program or service under sections 21.1.1 and 21.1.2 of the *Conservation Authorities Act*

- *The Aggregate Resources Act*
- *The Condominium Act*
- *The Drainage Act*
- *The Endangered Species Act*
- *The Environmental Assessment Act*
- *The Environmental Protection Act*
- *The Niagara Escarpment Planning and Development Act*
- *The Ontario Heritage Act*
- *The Ontario Water Resources Act*
- *The Planning Act*

The OHBA agrees with the ERO posting comments that MNRF “anticipates these changes, if approved, would provide greater certainty and clarity with respect to planning and development related applications, while ensuring conservation authorities focus on their core mandate to best protect people and property from the impacts of natural hazards, reducing duplication and barriers to development, that is important to Ontarians.”

#### **Industry Recommendations: Freezing Conservation Authority Fees**

The OHBA is supportive of the MNRF proposal regarding an amendment to the *Conservation Authorities Act* to enable the Minister to direct a Conservation Authority to maintain its fees charged for programs and services at current levels. Government imposed charges have escalated significantly over the last decade and make up as much as 25% of the cost of an average new home in many Ontario jurisdictions. OHBA recognizes that we are partners in city building with municipalities and Conservation Authorities and that in the future that fees may have to increase, however we believe a pause and freeze in the current crisis is appropriate.

OHBA appreciates the efforts of a number of CAs to openly publish service standards, to meet regularly with developer/builder liaison groups and to work cooperatively to ensure fees, processes and service standards are transparent and consistent. OHBA also recognizes that many CAs are working cooperatively with industry and municipalities to demonstrate cost recovery. However, this is not consistently applied across all 36 CAs and we believe there are opportunities for efficiencies to reduce costs for all participants in the process. Quite simply we are in a housing supply and affordability crisis and efforts should be made to reduce the cost of the land development planning review process.

Section 4 - Industry Recommendations: Identifying Conservation Authority lands suitable for housing and streamlining conservation authority severance and disposition processes that facilitate faster development

OHBA notes that the ERO posting states that Conservation Authorities own and manage over 145,000 hectares of land, a large portion of which was acquired with provincial grants issued under the *Conservation Authorities Act*. OHBA appreciates the sentiment that surplus lands may be appropriate for severance and disposition.

OHBA in fact supports the *appropriate* severance and disposition of land to facilitate new housing and potentially new affordable housing opportunities. The key word being “appropriate”. OHBA recognizes that Conservation Authorities and some stakeholders have expressed reservations regarding this proposal.

Therefore, we wish to highlight and reiterate aspects of the ERO 019-6141 proposal in which the MNRF has stated that they “are proposing to amend the regulation to require the land inventory to also identify Conservation Authority owned or controlled lands that *could* support housing development. In identifying these lands, the authority would consider the current zoning, and the extent to which the parcel or portions of the parcel may augment natural heritage land or integrate with provincially or municipally owned land or publicly accessible lands and trails.” OHBA has added emphasis on the word “could” as all stakeholders should recognize that of the 145,000 hectares of land owned and managed by Conservation Authorities, much of that land is in flood plains, hazard lands or environmentally sensitive lands. OHBA supports a review of a lands inventory with a careful lens and criteria established to ensure that only lands which are appropriately suited for residential development are considered for disposition. OHBA further recommends that the government consider disposition at below-market prices in partnership with non-profit builders and private builders to construct below-market affordable housing.

Note on ERO 019-6163 which has Conservation Authority Impact

While ERO 019-6163 is focused on *Planning Act* and *City of Toronto Act* changes, there are related impacts on Conservation Authorities that are proposed to take effect on January 1, 2023:

- Changes are proposed to re-enact provisions that are not yet in force but would limit conservation authority (CA) appeals of land use planning decisions. CAs would continue to be able to appeal matters where they are the applicant. When acting as a public body, CAs would only be able to appeal with respect to matters related to natural hazard policies in provincial policy statements.
- Changes are also proposed to broaden the ability of CAs to use an existing streamlined process to sever and dispose of land.

Conservation Authorities Working Group (CAWG)

OHBA is requesting the provincial government re-engage with the existing multi-stakeholder Conservation Authorities Working Group (CAWG) to assist with the implementation of legislative and regulatory changes. The focus of any re-engagements should be to ensure there is a streamlined, consistent and scoped process for CAs to help the Province achieve its housing goals while ensuring costs are low, the process is fast and Ontario taxpayers are protected.

### **Additional Comments and Recommendations**

OHBA recommends the Provincial Government further consider:

- A comprehensive review of definitions to ensure consistency across all 36 Conservation Authorities. In particular our members are frustrated by inconsistent interpretation of policies between different Conservation Authorities and sometimes between different staff at the same Conservation Authority;
- Buffers should be reviewed. For example, our members note there are often very different approaches to the definition of “top of banks” and “limits of development” between different Conservation Authorities and sometimes between different staff at the same Conservation Authority;
- The imposition of Regional Storm Control results in a substantial increase in the size of stormwater management facilities and is often unnecessary. This requirement should be reviewed

- Should the Provincial Government update the PPS/Growth Plan there are opportunities through clearly articulating the Provincial Interest and through definitions in those provincial documents to solve some of the planning and permitting issues at Conservation Authorities.
- Clarification and standardization regarding the ability for Conservation Authorities to revise their regional floodline elevations to incorporate a 'climate change factor'. Arbitrary additional vertical elevations to regional floodline elevations need to be based on science.
- Potential right-sizing and re-organization of some smaller Conservation Authorities

## **Conclusion**

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

The OHBA strongly believes that a healthy housing system only exists when all levels of government work together with the private sector to ensure the right mix of housing choices and supply that provide all residents' shelter needs through their full life cycle. A properly functioning housing system should provide stability to both renters and owners, at prices people can afford and in the choice that meets their needs. The housing system must also be able to respond to meet projected demographic and market requirements for current and future residents.

In previous submissions, our provincial association stated that CA's have an important role in watershed management, and that while some Conservation Authorities have made significant strides to improve planning and permitting while working cooperatively with the industry, we remain concerned that a number of Conservation Authorities have extended their reach well beyond a core mandate related to natural hazards (PPS section 3.1) and watershed management. There needs to be greater consistency with respect to the roles and responsibilities of Conservation Authorities. This needs to be appropriately balanced with the broader legislative framework that CA's operate in, which allows planning authorities and our members to build strong, healthy and environmentally responsible communities.

It is important that the province work in collaboration with municipalities and stakeholders to ensure that CA's focus and deliver on their core mandate of protecting people and property from flooding and other natural hazards and conserving natural resources. Our 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-oriented communities and remediating brownfield sites, our members are important partners with the government in delivering complete communities and protecting environmental resources. Working with other approval authorities, Conservation Authorities should continue to have an important role in the future of Ontario's planning process through their core role of protecting people and property from hazards and flooding.

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