



Ontario Federation of Agriculture

Ontario AgriCentre

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June 29, 2017

Mr. Finn MacDonald, Policy Officer
Ministry of Natural Resources and Forestry
Natural Resources Conservation Branch
300 Water Street
Peterborough, ON
K9J 8M5

Dear Mr. Macdonald;

RE: EBR Registry Number 013-0561 Proposed amendments to the Conservation Authorities Act as part of Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 36,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

A number of the proposed amendments reflect the comments, suggestions and recommendations we made to previous EBR postings in October 2015 and August 2016. We applaud the provincial government for requiring conservation authorities to establish advisory boards. OFA fully expects that all conservation authorities will establish an agricultural advisory board to provide agriculture-specific advice to the conservation authority. We also welcome the amendments intended to improve governance, transparency and to better align conservation authority Board terms with local council terms.

That being said, OFA objects to several aspects of the proposed amendments to the Conservation Authorities Act found in Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017.

We strongly advocated for clarity in the Act. We recommended that the definitions of key terms, "development", "watercourse" and "wetlands" be clarified in the Act itself. Now, unfortunately, we find that the definitions of these terms, and several others, will be deferred to future regulatory changes. It is critical that the development of a regulation to define "development activity", "hazardous land", "watercourse", "wetland" and "pollution" receive the Ministry of Natural Resources and Forestry's highest priority after the Conservation Authorities Act amendments are passed.

The 2014 Provincial Policy Statement (PPS) contains an excellent, comprehensive definition of "wetlands". It's remained consistent throughout two PPS reviews. It's replicated in the Greenbelt Plan, the Growth Plan for the Greater Golden Horseshoe and the Niagara Escarpment Plan. OFA

strongly recommends that the PPS definition of wetlands be adopted, verbatim, in the amended Conservation Authorities Act's definitions regulation.

We've also long argued that the Conservation Authorities Act definition of a "watercourse" as "an identifiable depression in the ground in which a flow of water regularly or continuously occurs" is excessively vague. One could consider a furrow in a plowed field as watercourse, an outcome we highly doubt was the intent of the legislation's authors.

The Ontario Ministry of Agriculture, Food and Rural Affairs' factsheet, "Top 10 Common Law Drainage Problems Between Rural Neighbours" contains a description of a "natural watercourse", a portion of which follows;

"Almost the whole definition of a natural watercourse is founded on the saying aqua currit et debet currere, or "water flows naturally and should be permitted thus to flow". A natural watercourse is defined generally as "a stream of water which flows along a defined channel, with a bed and banks, for a sufficient time to give it substantial existence". It must, on casual examination, "present the unmistakable evidence of the frequent action of running water".

OFA recommends that the Conservation Authorities Act definition of a watercourse be rewritten to incorporate the following principles;

- i. that there be reference to a "defined channel, with a bed and banks",
- ii. that intermittent streams are natural watercourses, and
- iii. that any definition of a watercourse categorically exclude man-made drains, roadside ditches, agricultural swales as well as drains constructed under the Drainage Act.

We believe that these principles encapsulate the elements of a natural watercourse, and that a new definition of a watercourse be based on these three principles.

We look ahead to the Ministry's proposals for defining "development activity". The current term is "development", differs substantially from the 2014 PPS definition of the same word. Having the same word defined quite differently leads to widespread confusion, not only on the part to the "regulated community", but also on the part of the regulators themselves. We trust that utilizing a distinct and unique term will lead to improved clarity of intent and understanding. That being said, the final version of the "development activity" definition must exclude the full range of agricultural uses encompassed in the 2014 PPS definition of the "agricultural uses".

Bill 139 proposes significant changes to the entry powers for conservation authority staff. Section 30.1 proposes entry without a warrant, while section 30.2(3) would authorize warrantless searches. Both proposed provisions fail to acknowledge the biosecurity provisions many farmers utilize to minimize the risks of disease, pathogen or pest transfers to livestock, poultry and crops. Diseases, pathogens or pests can be transferred from farm to farm by vehicle tires or footwear that hasn't undergone appropriate decontamination. They also fail to acknowledge that unannounced entry into areas frequented by livestock or crops can pose a risk to those animals or crops. Entry to farms should only come after direct contact with the farmer, and after any farm-specific biosecurity protocols have been followed. The potential consequences of unannounced and unauthorized entry onto farm properties by individuals who have not fully complied with on-farm biodiversity protocols can have significant, long-term effects on Ontario agriculture. Herds, flocks or crops may have to be destroyed as a result of unannounced, unauthorized entry onto farm properties.

We acknowledge that if works are being undertaken under a conservation authority-issued permit, that the authority has a right to inspect the works to ensure they're being done in full accordance with the permit. Surely conservation authority staff can pre-arrange any necessary site inspection? Site visits under section 30.1 should only be undertaken with the property owner's foreknowledge.

The current Conservation Authorities Act speaks to "reasonable notice" of staff's intent to enter private lands. Similar provisions are not carried on in the proposed amendments. Removal of this provision is unacceptable. OFA demands that "reasonable notice" of staff's intent to enter private lands is restored to the Act.

Many farm businesses, like small businesses in other sectors, have chosen to incorporate to facilitate the transfer of the farm business from one generation to the next. The farm business remains family owned and family operated. They are small, family-based and local, not large, faceless and multinational. The huge disparity between the proposed penalties for individuals versus those for corporations ignores the reality that incorporated farms are small businesses, structured as a "corporation" solely to facilitate the businesses intergeneration transfer. The disparity reflects a total lack of understanding of the realities of Ontario's small farm businesses. The proposed penalties view all corporations through the same lens, regardless of their size, ownership or location. The Ontario Federation of Agriculture demands that Section 30.4 be amended to reflect the reality that all corporations are not the same and that incorporated farm businesses should not be treated and penalized in the same manner as large, faceless multinationals.

The Ontario Federation of Agriculture is disappointed that the proposed amendments to the Conservation Authorities Act fail to fulfil the anticipation of substantive, positive change as envisioned in the 2015 and 2016 EBR Registry postings. Workable, widely accepted definitions of terms such as "wetlands" and "watercourse" exist. The Conservation Authorities Act does not require uniquely worded definitions of these terms. Furthermore, the proposed changes to entry powers, including warrantless entry and searches are, in our opinion, unnecessary and open to abuse.

Sincerely,



Keith Currie
President

cc: Hon. Kathryn McGarry, Minister of Natural Resources and Forestry
Hon. Jeff Leal, Minister of Agriculture, Food and Rural Affairs
OFA Board of Directors