



Ontario Federation of Agriculture

Ontario AgriCentre

100 Stone Road West, Suite 206, Guelph, Ontario N1G 5L3
Tel: (519) 821-8883 • Fax: (519) 821-8810 • www.ofa.on.ca

August 29, 2016

Mr. Alex McLeod
Ministry of Natural Resources
Natural Resources Conservation Branch
300 Water Street
Peterborough, Ontario
K9J 8M5

Dear Mr. McLeod;

RE: EBR Registry Number 012-7583 Conservation Authorities Act Review
Consultation Document. Conserving Our Future: Proposed Priorities for Renewal

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.

The majority of Ontario's family farms are located in the same areas of Ontario where most Conservation Authorities operate, making the outcomes of this review important for both farmers and Conservation Authorities.

Before addressing the discussion questions, we emphasize the reality that there is only one Ontario landscape, meaning that the full range of landforms and land uses found across Ontario; urban, rural, agricultural, natural heritage, cultural heritage and mineral extraction, must share that one landscape. Inherent in this perspective is the recognition that our agricultural areas not only provide us with food, fibre and fuel, but also a broad range of environmental and ecological goods and services that benefit all Ontarians. These environmental and ecological goods and services, in alphabetical order, include;

- aesthetic and recreational space,
- air quality, including oxygen production,
- biodiversity,

- carbon sequestration,
- climate change mitigation,
- nutrient cycling,
- pollination services,
- soil erosion control,
- water cycling (purification, retention, flood mitigation, groundwater recharge), and
- wildlife and endangered species habitat.

There is also the additional expectation, at least from the Ontario Government, that Southern Ontario in general, and the Greater Golden Horseshoe in particular, will also accommodate substantial future population growth, and the jobs and infrastructure necessary to support this projected growth.

Furthermore, it must be emphasized that agriculture is the principle resource-based land use within the area of Southern Ontario where Conservation Authorities operate. Provincially, the protection of Ontario's prime agricultural areas for their long-term agricultural use is a key objective. Ontario farmers have been challenged by the Premier to double their annual growth and add 120,000 jobs by 2020. To help facilitate this, Conservation Authorities must adopt policies and programs that compliment this goal, rather than hinder it.

Lastly, a one landscape approach does not view agriculture and agricultural uses in a negative light, as was the case in a 2009 Halton Region Conservation Authority letter which stated, *"the enhanced linkages and the full Centres of Biodiversity will not be realized as long as the existing agricultural uses remain in the rural areas."* Statements such as this are hostile, and demonstrate an unwillingness to accept the presence of agriculture on the landscape of Ontario.

All of this is in the context of an ever-shrinking supply of agricultural land. Based on data from the 2006 and 2011 censuses, the total area of Ontario farms declined dramatically by almost 260,000 ha (636,000 acres) between 2006 and 2011; from 5.4 Million ha (13.3 Million acres) to 5.1 Million ha (12.6 Million acres). Put in perhaps an easier form to visualize, that's 350 acres/day, equivalent to 173 CFL football fields, each and every day! Maintaining our agricultural lands for the production of food, fibre and fuel is critical. All of Ontario's legislation, regulations, policies and programs need to view their world through this lens.

The Consultation Document sets out five priorities for updating the Conservation Authorities Act.

1. Stronger oversight and accountability in decision making;

Possible actions include:

- modern structure for the Act; purpose statement and defined roles and responsibilities
 - updated accountability mechanisms
 - enhanced provincial oversight
 - clarify municipal oversight and direction
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- updated criteria for establishment, enlargement, amalgamation and dissolving Conservation Authorities

OFA Perspective:

A purpose statement in the Act could be an improvement, as it could serve to guide individual Conservation Authority's conduct. But the critical aspect would be the language used to set out the purposes of the Act, as well as how individual

Conservation Authority compliance would be ensured. Defined roles and responsibilities are possible improvements, but again, how they are set out is key.

An often heard complaint hinges on the inconsistent treatment farmers receive from the Conservation Authorities they deal with. Given that Conservation Authority boundaries are based on watershed boundaries, farmers often deal with multiple Conservation Authorities, particularly if they farm numerous properties some distance from each other. Differing policies, differing requirements, differing time lines, differing expectations are all matters we've heard all too often.

The proposed accountability mechanisms relate to Board best practices, codes of conduct, conflicts of interest, open meetings and disclosure of information; all of which could be positive. Some Conservation Authorities already post meeting notices, minutes, etc. on their websites. We applaud these initiatives. Openness and transparency should underpin each and every Conservation Authority action or undertaking. Appointed Board members need to clearly understand their roles and responsibilities on the Conservation Authority Board, as well as the limits of their role. A uniform board training program across all Conservation Authorities would help to facilitate this, combined with an authority-specific overview of the features and aspects of the area under the authority's jurisdiction.

A critical aspect of oversight and accountability should include a well-defined, non-biased, low-cost and easily accessible appeal process for instances where applications for an approval, permit, etc. have been denied. Openness and transparency only operate where decisions can be appealed. While appeals to the Board may serve as a first level appeal, the process needs a second level appeal. We recognize that one can appeal to the Mining and Lands Commissioner, but given the multiplicity of legislation and planning regimes in effect, a second level appeal to a person or panel capable of grasping all of the nuances and interrelationships involved is critical.

2. Increased clarity and consistency in roles and responsibilities, processes and requirements;

Possible actions include:

- delineate mandatory and optional programs
- set a provincial policy directive
- clarify regulatory scope
- strengthen compliance tools
- streamline processes

OFA Perspective:

From OFA's perspective, setting out a suite of both mandatory and optional programs to offer would be positive, depending on how mandatory and options were described. Some define a Conservation Authority's primary function as protecting people, property and communities from water-related natural hazards (e.g. flooding, drought, erosion) and assisting municipalities with Official Plan policies related to Natural Hazards.

Conservation Authority parks, along with land stewardship and outdoor education programs are optional.

The Provincial Policy Statement (PPS) example is often cited as a model for setting a provincial policy directive. It has been suggested it could be in the form of a statement on the Environmental Bill of Rights (EBR) Registry, outlining the expectations of the various Ministries that depend on Conservation Authorities for program delivery.

Clarifying an authority's regulatory scope could also be positive, depending on how this is described. Priority 1 spoke to a purpose statement and defined roles in the Conservation Authorities Act. A purpose statement and defined roles could go a long way toward clarifying an authority's regulatory scope.

Several key phrases used in the Act, regulations and policies are undefined, namely interference with a wetland, conservation of land. Given that an Authority's role to a large degree involves interference with a wetland and the conservation of land, any proposed amendments to the Act must define these two terms. At this point in time, we cannot offer suggestions on how they should be defined. We would recommend, however, that the Ministry of Natural Resources and Forestry set up a multi-Ministry, multi-stakeholder working group tasked with drafting definitions of interference with a wetland and the conservation of land.

Terms in the Act, specifically "watercourse", "wetland" and "development", are vague or broadly defined. Conservation Authorities, their staff as well as those who interact with Conservation Authorities would benefit from clear, concise definitions of these terms.

The current definition, "*watercourse means an identifiable depression in the ground in which a flow of water regularly or continuously occurs*" is both excessively vague, and excessively broad. One could include the furrows in a plowed field as being watercourses, 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 we have copied;

"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 bed and bank",
- ii. that intermittent streams are natural watercourses, and

- iii. that man-made drains, including roadside ditches, agricultural swales and drains constructed under the Drainage Act, be excluded.

We believe that these principles encapsulate the elements of a natural watercourse, and that a new definition of a watercourse be drafted, based on these three principles. Numerous provincial statutes and policies present differing definitions of a wetland. MNRF's Wetland Conservation in Ontario discussion paper noted fifteen different policy instruments with roles in wetland conservation and management. In many cases, those different policy instruments employ different definitions of a wetland. In the case of the Conservation Authorities Act, its definition differs from that in the 2014 Provincial Policy Statement. The multitude of definitions serves no interest. The key elements are generally present in each example, but the lack of consistency breeds confusion. We cannot say why they differ. But we firmly believe that they should not differ; that one definition, broadly applied, is necessary.

“wetland” means land that,

- (a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,
- (b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,
- (c) has hydric soils, the formation of which has been caused by the presence of abundant water, and
- (d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water,

but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d).

From OFA's perspective, the 2014 Provincial Policy Statement definition of wetlands, as reproduced below, should be the operational standard.

Wetlands: means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens.

Periodically soaked or wet lands being used for agricultural purposes which no longer exhibit wetland characteristics are not considered to be wetlands for the purposes of this definition.

OFA strongly recommends that the 2014 Provincial Policy Statement definition of wetlands be also used in the Conservation Authorities Act to define wetlands.

As with wetlands, numerous provincial statutes and policies present differing definitions for development. Most duplicate the 2014 Provincial Policy Statement definition of development, which reads as follows;

Development: means the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the Planning Act, but does not include:

- a) activities that create or maintain infrastructure authorized under an environmental assessment process;
- b) works subject to the Drainage Act; or
- c) for the purposes of policy 2.1.4(a), underground or surface mining of minerals or advanced exploration on mining lands in significant areas of mineral potential in Ecoregion 5E, where advanced exploration has the same meaning as under the Mining Act. Instead, those matters shall be subject to policy 2.1.5(a).

The Conservation Authorities Act definition for development reads as follows;

“development” means,

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind,
- (b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,
- (c) site grading, or
- (d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere;

It differs significantly from the 2014 Provincial Policy Statement definition. It includes all building construction (a). It applies to changes in the use of a building (b). It applies to works subject to the Drainage Act.

At the very least, using the same term, “development” in such a differing manner brooks trouble. Elements in the Conservation Authorities Act definition for development are important in the context of Conservation Authority jurisdiction over wetlands and watercourses, as described in section 28. Use of the same term in such different ways is unacceptable. OFA recommends adoption of a different term for the Conservation Authorities Act to define and describe “development”. At this point, the OFA will not propose a different term.

Increased clarity and consistency could come from limiting Conservation Authority comments to only those where they have a direct statutory role; regulated features and areas (wetlands, watercourses).

The consultation paper speaks to strengthening compliance tools through increased penalties. The OFA believes that penalties are the last resort in compliance after all other options have failed. Increased penalties speak to an institutional failure to use collaborative efforts, property owner liaisons and private land stewardship as means to achieve compliance. The OFA opposes increased penalties.

The OFA welcomes suggestions for a more streamlined process related to Conservation Authority's planning and permitting requirements. We've long advocated for a more-streamlined approach to permitting. In those instances where a property owner requires approvals from both a municipality as well as a Conservation Authority, perhaps the Conservation Authority should be a commenting agency on the municipal approval, but not a permit issuing agency.

3. Improved collaboration and engagement among all parties involved in resource management;

Possible actions include:

- provincial coordinating body
- enhance business relationship with Conservation Ontario
- enhance Indigenous participation
- enhance public and stakeholder participation
- coordination and sharing of resources

OFA Perspective:

On "resource management", we all too often find that Conservation Authority staff lack even a basic understanding of 21st century agriculture and the regulatory requirements farmers operate under. As previously noted, agriculture is the single biggest land use across Southern Ontario.

We view agriculture in Ontario as sustainable. Farmers have been raising livestock and growing crops in Southern Ontario for over 200 years. We expect future farmers will be raising livestock and growing crops for many more years to come. The methodology will change over time, and we can expect that the type of crops grown, or livestock raised, may also change in response to changing market demands, and in response to climate change. But from our perspective farmers are resource managers too. That role should be welcomed and applauded by Conservation Authorities.

Enhanced public and stakeholder participation is positive. One change that would, in our opinion, help to achieve this would be a general farm organization representative on each Conservation Authority Board.

4. Modern funding mechanisms to support conservation authority operations;

Possible actions include:

- clarify use of municipal levies
- consistency around fees
- improve fiscal oversight and accountability
- clarify provincial funding processes

OFA Perspective:

We support consistency around fees. Fee schedules should be consistent from Conservation Authority to Conservation Authority, for the same service. We also emphasize the need to establish service standards for Conservation Authority reviews, permits, etc. The Conservation Authorities Act should set out specified timelines for rendering a decision or issuing a permit, similar to those for the Planning Act. All too often we hear from farmers that they've applied to their Conservation Authority for a permit, but months later they haven't even heard if it will or will not be issued. They're left hanging.

We recognize that there are significant funding discrepancies across Ontario's 36 Conservation Authorities. In part, these discrepancies may help to explain the lengthy delays faced by rural property owners who have sought permits and approvals from their local Conservation Authority. The Ontario Federation of Agriculture will not propose changes to funding formulas. That being said, we do firmly believe that provincial government ministries that rely on Conservation Authorities to delivery programs on behalf of one or more ministries deserve adequate funding from these ministries, sufficient to enable program delivery.

5. Enhanced flexibility for the Province to update the Conservation Authorities Act in the future;

Possible actions include:

- ability to develop additional programs
- ability to delegate programs in the future
- ability to delegate programs to others
- enhanced authority to deliver programs and services

The Ontario Federation of Agriculture offers no comments on this theme.

The Consultation Document also noted other actions under consideration:

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- reduce administrative burdens (appointing and replacing board members and approval of board per diems)
 - aligning board terms with municipal election cycle
 - develop board orientation and training
 - develop coordinated communications

OFA Perspective:

The Ontario Federation of Agriculture supports aligning Conservation Authority Board terms with the municipal election cycle.

Furthermore, the Ontario Federation of Agriculture supports board orientation and the development of Board training materials.

The Ontario Federation of Agriculture welcomes this opportunity to provide its perspective on the Conservation Authorities Act Review Consultation Document. Conserving Our Future: Proposed Priorities for Renewal. We look forward to the incorporation of our perspective in any future changes to the Conservation Authorities Act, regulations and policies.

Yours truly,

A handwritten signature in black ink, appearing to read "Don McCabe".

Don McCabe
President

DM/pj

cc: The Honourable Kathryn McGarry; Minister of Natural Resources and Forestry
The Honourable Jeff Leal; Minister of Agriculture, Food and Rural Affairs
Kim Gavine; Conservation Ontario
OFA Board of Directors
