

May 17, 2019

Mr. Alex McLeod
Policy Officer
Ministry of Natural Resources and Forestry
300 Water Street
6th Floor, South Tower
Peterborough, ON
K9J 8M5

Dear Mr. McLeod;

RE: ERO 013-4992 Focusing conservation authority development permits on the protection of people and property

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 38,000 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.

Proposed prohibited activities under section 28 (as amended by Schedule 4 of the Building Better Communities and Conserving Watersheds Act, 2017;

- **Development in areas related to natural hazards such as floodplains, shorelines, wetlands and hazardous lands (i.e. lands that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock)**

OFA supports regulating development in areas subject to natural hazards such as floodplains, shorelines, wetlands and hazardous lands, as set out in section 3.1 of the Provincial Policy Statement. Widespread flooding this spring emphasize the wisdom in directing new urban settlement expansions and buildings away from shorelines, floodplains or areas of unstable soils or bedrock.

- **Interference with or alterations to a watercourse**

OFA supports regulating interference with or alterations to a watercourse, contingent on the definition of a watercourse used in the regulations. Any proposed regulated area adjacent to a watercourse needs clearly defined limits. What yardstick will be used to delineate this area? How will the limits be mapped? Will information of the limits of these regulated areas be readily accessible to property owners, particularly when they're applying for a building permit or Planning Act approval? OFA recommends use of the 100-year flood as the universal yardstick for determining the extent of a regulated area, mapped by the extent of such an event. A specific line

denoting this extent should be clearly indicated on both conservation authority mapping as well as on municipal mapping. Development activities, as ultimately defined in the Conservation Authorities Act and regulations, within the 100-year flood limit would require conservation authority permission. Development activities proposed for areas beyond the limits of the 100-year flood would be exempt from conservation authority review and permission.

When it comes to “interference with or alterations to a watercourse”, OFA firmly believes that man-made features such as grassed waterways, municipal drains, tile drains and private ditches should be exempt from conservation authority review and permitting. These anthropogenic features are intended to control erosion, or to facilitate crop production by removing excess water from fields.

- **MNRF to create a regulation to replace Regulation 97/04 which governs the content of conservation authority regulations with a single regulation**

OFA has no preference for a single all-encompassing regulation for all conservation authorities over the current individual regulation for each authority. The critical point is how the key terms are defined, how the regulated areas are delineated and their limits.

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

Firstly, OFA sees no need to change the definition of “pollution” from its wording in the current Conservation Authorities Act.

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.

OFA has long advocated reliance on the PPS definition for “wetland” for the CA Act, as well as wherever else the term is defined. We further propose that any definition of a wetland for conservation authority regulation purposes, i.e. interference [Current CA Act 28(25)] should clearly exempt man-made ditches and drains, along with irrigation/farm ponds and constructed wetlands. These man-made are routinely misidentified as wetlands. They’ve been constructed to serve specific goals such as water retention or treating barn yard runoff. Protecting them as “wetlands” defeats the purposes they were constructed to serve. Furthermore, the benefits provided by these features will be lost, and property owners and agencies will not construct new ones.

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. Based on this wording, one could deem 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 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 the definition of a watercourse categorically excludes man-made drains, roadside ditches, grassed waterways, agricultural swales as well as drains constructed under the Drainage Act.

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

Defining "development" in the current Conservation Authorities Act differently than it is defined in the Provincial Policy Statement, Greenbelt Plan, Growth Plan for the Greater Golden Horseshoe and the Oak Ridges Moraine Conservation Plan simply leads to confusion. We acknowledge that the current Conservation Authorities Act definition of "development" addresses critical activities that need regulation, however using the same word so differently obviously leads to confusion by all parties. The current Conservation Authorities Act defines development as;

- (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 affect 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 onsite or elsewhere.

OFA proposes that the term be renamed "development activity" and that is be defined as meaning;

- a) *the construction, reconstruction, erection or placing of a building or structure of any kind in a regulated area, or*
- b) *any change to a building or structure that would increase the size of the building or structure or increase the number of dwelling units in the building or structure in a regulated area.*

OFA believes that both "site grading" and "the temporary or permanent placing, dumping or removal of any material, originating onsite or elsewhere" be dropped, as they are, in our view, redundant. The Provincial Policy Statement and Ontario's Provincial land use plans all address site alteration, which encompasses both "site grading" and "the temporary or permanent placing, dumping or removal of any material, originating onsite or elsewhere". Furthermore, this posting proposes to "exempt low-risk development activities requiring a permit including certain alterations and repairs to existing municipal drains". The "temporary or permanent placing, dumping or removal of any material, originating onsite or elsewhere" was a point of conflict between the Drainage Act and the Conservation Authorities Act, in relation to certain maintenance and repair activities. The existing Drainage Act and Conservation Authorities Act Protocol document speaks to specific maintenance and repair activities that involve "the temporary or permanent placing, dumping or removal of any material, originating onsite or elsewhere", which reinforces our belief that that "site grading" and "the temporary or permanent placing, dumping or removal of any material, originating onsite or elsewhere" be safely dropped from a new "development activity" definition.

- **Defining undefined terms including “interference” and “conservation of land”**

Neither term is currently defined, although they appear in the Conservation Authorities Act. Definition of both is necessary given the interrelationship between interference and conservation of land and each conservation authorities core role in the protection of people and property from natural hazards.

OFA recommends the following definitions of “interference” and “conservation of land”;

“conservation of land” means the protection, management, or restoration of lands within the watershed for natural hazard management, and may include maintaining or enhancing the vegetative cover of non-agricultural lands

“interference” means any anthropogenic act which hinders, disrupts or impedes in any way the hydrologic function of a wetland or watercourse

OFA looks forward to having the opportunity to formally comment on the government’s proposed wording of the definitions for “wetland”, “watercourse”, “development”, “interference” and “conservation of land” in the near future.

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

OFA supports this proposal. Where a surrounding area’s hydrological connection has been severed, as by a road, it makes sense to reduce the regulated area to exclude areas beyond the road.

- **Exempt low-risk development activities requiring a permit including certain alterations and repairs to existing municipal drains**

OFA has supported this practice with the Endangered Species Act. We fully support this in the context of the Drainage Act, particularly with the reference to the Drainage Act and Conservation Authorities Act Protocol. Would note that the Protocol only addresses 12 activities related to the maintenance and repair of existing municipal drains, constructed under the Drainage Act. Additional work on other Drainage Act-related activities needs to be addressed. Examples of these activities include extensions to and improvements of existing municipal drains, as well as new drains constructed under the Drainage Act. The entities that developed the original the Drainage Act and Conservation Authorities Act Protocol should be tasked with addressing the Drainage Act-related activities noted above.

- **Allow conservation authorities to further exempt low-risk development activities from requiring a permit**

OFA supports allowing conservation authorities to further exempt additional low-risk activities. OFA was party to the development of Conservation Ontario’s *Guideline for Development of a Guide to Conservation Authority Permits on Agricultural Lands*. Enabling conservation authorities to further exempt additional low-risk activities allows them to focus their primary efforts and activities on proposed development activities that are not low-risk activities. OFA recommends that Conservation Ontario’s *Guideline for Development of a Guide to Conservation Authority Permits on Agricultural Lands* serve as the basis for determining those low-risk activities that conservation authorities should exempt from their permit processes.

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- **Require conservation authorities to notify the public of changes to mapped regulated areas such as floodplains and wetland boundaries**

OFA fully supports this long overdue recommendation. Its something we've sought for a long time. Firstly, all property owners deserve personal notification of any proposed designation change affecting any or all of their property. Secondly, notification must occur **before** proposed changes are considered, to allow for public input and comments. Thirdly, the province must implement a **no-cost** appeal mechanism for property owners who believe they face an incorrect land use designation applicable to some or all of their property. In this **no-cost** appeal, the burden of proof that the proposed designation is correct must be on the ministry, municipality or conservation authority proposing the designation change, and not on the property owner. Lastly, no proposed designation change should apply until all appeals are exhausted.

Going further, we believe this proposal does not go far enough. The duty to notify should extend beyond applying to conservation authorities and include provincial ministries that initiate changes to land use designations as well as to municipalities themselves. We reiterate our long-standing belief that all property owners deserve personal notification of any proposed designation change affecting any or all of their property. To do less, or to put the burden of proof on property owners is arbitrary and undemocratic.

- **Require conservation authorities to establish, monitor and report on service delivery standards**

OFA supports the principle of established, monitored and reported on service delivery standards, but these standards must be provincially-determined so that property owners throughout Ontario where conservation authorities operate will face the same service delivery standards. Included in these service delivery standards are standardized turn-around times for permits and authorizations and pre-determined application requirements, including information requirements, possible studies to support the application. Any possible studies in support of an application should be co-ordinated with local municipal requirements to avoid duplication and unnecessary costs for applicants. Lastly fees charged for permits, authorizations, etc. must be based on the actual costs incurred to review an application and issue any subsequent permit or authorization, i.e. cost recovery, not revenue generation.

OFA welcomes the opportunity to provide its perspective on *ERO 013-4992 Focusing on conservation authority development permits on the protection of people and property* and its companion, *ERO 013-5018 Modernizing conservation authority operations – Conservation Authorities Act*.

Sincerely,



Keith Currie
President

KC/pj

cc: The Honourable Rod Phillips, Minister of Environment, Conservation and Parks
The Honourable Ernie Hardeman, Minister of Agriculture, Food and Rural Affairs
OFA Board of Directors