

December 23, 2022

Public Input Coordinator
MNRF - PD - Resources Planning and Development Policy Branch
300 Water Street, 6th Floor, South tower
Peterborough, ON
K9J 8M5

Submitted online and sent via email to mnwaterpolicy@ontario.ca

Re: ERO 019-2927: Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario

The Ontario Federation of Agriculture (OFA) proudly represents more than 38,000 farm family members across the province, supporting our members and the agri-food industry on issues, legislation and regulations governed by all levels of government. OFA works to ensure the agri-food sector and our rural communities are included, consulted and considered in any new and changing legislation that impacts the sustainability of our farm businesses. We are the leading agricultural advocate for Ontario farmers, their businesses and their communities.

OFA reiterates our longstanding concerns over Ontario's shrinking agricultural land base. Ontario's limited supply of farmland is a scarce resource, making up less than five percent of all the land in the province. In contrast, the Hudson Bay lowlands, a vast wetland complex abutting Hudson and James Bays, cover about 25% of Ontario's land area.

We are pleased to have this opportunity to respond to ERO # 019-2927: Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario. The stated purpose of this proposal is to "streamline approvals under the *Conservation Authorities Act* to focus on natural hazards and to help meet Ontario's housing supply needs." Specifically, it is looking at a regulation governing the activities that require a permit under this Act.

OFA is in favour of the goal of increased coordination between conservation authority permitting and municipal planning approvals for all - not just those that relate to meeting Ontario's housing supply needs.

2.1.1 Prohibited Activities

The definition of "Development Activity" is proposed to be included in regulation. The current definition is:

- 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.*

We believe that the current definition should be expanded to include a clause stating that “the full range of agricultural uses (as defined in the 2020 Provincial Policy Statement) do not constitute “Development Activity”.

It is also important to note that 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 the definition of “development activity”.

The consultation guide lists several activities that may be eligible for either streamlined approvals or possibly fully exempt from permit requirements providing certain rules are followed. It is unclear if the intent is to limit these from conservation authority approvals and permits specifically, or all approvals and permits. OFA suggests that this should be limited to conservation authority authorization.

- *One-time placement of fill not exceeding 10 cubic meters or less that is not placed within hazardous land or a watercourse or wetland.*

Specifying the timeframe in which a one-time placement is permitted under this policy is required. Is it one-time placement ever, in which case the question arises of how does a new owner of a property know what activities a former owner did; or is it one time annually, etc.? Furthermore, we believe that the generator is responsible for ensuring the quality of the fill/soils meet all provincial requirements for application to agricultural land.

- *Installation of a fence with a minimum of 75mm of space between panels*

OFA is in favour of including such fence installations as a streamlined activity.

- *Well installation that is not within hazardous land or a wetland, including private drilled or bored water well installation and the installation of municipal water monitoring wells.*

OFA is concerned that a streamlined approval or exemption for well installations may negatively impact water quality and quantity. Many farmers rely on private wells for both their domestic use as well as agricultural uses - including watering their livestock. There must be assurances that all well installations remain robust to ensure protection of water quality and quantity for our aquifers and existing wells.

- *installation of tile drains and maintenance or repair of existing tile drains that are not within a wetland or “other area” outside of a wetland where development is prohibited and with an outlet that is not directed or connected to a watercourse, wetland or valley (steep slope)*

OFA is very pleased to see this included within the list of activities proposed for streamlined approvals or exemptions.

-
- *installation and maintenance of an offline pond for watering livestock that is not connected to or within a watercourse or wetland, and where no excavated material is deposited within a watercourse, wetland or valley (steep slope).*

We are very pleased to see offline ponds for watering livestock included. We recommend also adding offline ponds for irrigation to the streamlined approvals.

- *installation of agricultural in-field erosion control measures with an outlet that is not directed or connected to a watercourse, wetland or steep slope.*

OFA is very pleased to see this included within the list of activities proposed for streamlined approvals.

- *maintenance or repair of a driveway/access that is outside of a wetland or maintenance or repair of an existing public road, provided that the driveway or road is not extended or widened, or the elevation, bedding materials, or existing culverts are not altered.*

OFA is in favour of this being included for streamlined approvals.

- *maintenance and repair activities for existing municipal drains, including pipes, junction boxes or catch basins, in accordance with the Drainage Act and Conservation Authorities Act Protocol.*

OFA is a strong advocate for the *Drainage Act* and *Conservation Authorities Act* Protocol and we are in favour of all options to streamline maintenance and repair on municipal drains. A poorly functioning municipal drain can have devastating impacts on farmers and the current system is not meeting our needs in many areas. We do however recognize the need to update the DART Protocol and look forward to our continued involvement in that process.

2.1.2 Areas where activities are prohibited

This proposed new regulation will contain several key definitions.

Watercourse:

OFA is appreciative of the proposed change to the definition of “watercourse” to “a defined channel having a bed, and banks or sides”, as we have requested for many years now. However, we believe that in addition to this change, that the definition of a watercourse must exclude man-made ditches, roadside ditches, agricultural swales as well as drains constructed under the *Drainage Act*.

Wetland:

OFA believes that the existing definition of “wetland” must add another clause that explicitly states that the wetland definition also does not include:

- wetlands created for wastewater or stormwater,
- excavated ponds (including those created for watering livestock and/or irrigation ponds),
- wetlands within agricultural drainage ditches and drains constructed under the *Drainage Act*,
- wetlands that develop as the unintended consequence of agricultural development, and

-
- wetlands created on farms for agricultural purposes (including to treat barnyard runoff, milk house wash water, for tile drain outlets).

The inclusion of such exemptions as these are not unprecedented. These are based on Nova Scotia's Wetland Conservation Policy.

This consultation guide mentions that Ontario's Flooding Strategy is being reviewed. We did not note any specific reference to this review in other government consultation postings. We recommend that any proposed changes to these standards be subject to public consultation and input.

This consultation is also proposing that "*other areas in which development is prohibited would be areas within 30 metres of all wetlands*". OFA supports this proposal however we believe it should go further to include "and where a hydrological connection has been severed". Where a surrounding area's hydrological connection has been severed, as by a road for example, it makes sense to reduce the regulated area to exclude areas beyond the road.

2.2 1 Permit Applications and 2.2.2 Issuance of Permits

This section outlines the requirements for having a permit application deemed complete and the issuance of permits. We appreciate a detailed list such as the one suggested to ensure applicants can be assured their applications are complete, without any surprises throughout the process. Whatever changes are implemented to the permit process, the outcome must still ensure that all nearby properties (not just adjacent properties) are not negatively impacted, and that there is process for affected people to find recourse if needed.

2.3 Program Service Delivery Standards

OFA supports the development of Program Service Delivery Standards, however we believe these standards must be provincially determined so that property owners throughout Ontario where conservation authorities operate will face the same service delivery standards. This will be of great assistance to our members who may have farms in multiple conservation authority boundaries. However, we do recognize the challenge that not all conservation authorities have the same levels of funding to do this work. We therefore recommend that the conservation authorities are adequately funded to be able to meet provincially-determined program service delivery standards.

2.3.2 Mapping of areas where development or other activities are prohibited

OFA is in favour of having maps of areas that depict where permits may be required. However, it must also be recognized that these boundary lines on a map may not depict what is actually occurring on the ground. These boundary lines should be viewed as invitations for discussions to allow for ground truthing of the information. Conservation authority staff must still be willing to work with landowners to verify the accuracy of the information, and then update the mapping.

Changes to these maps (beyond minor modifications, adjustments, or corrections) must be conveyed to the public. Private landowners who may be impacted must be directly notified and given the opportunity to consult with the conservation authority while these changes are still draft or proposed.

3. For Discussion: Improved coordination between Conservation Authorities Act regulations and municipal planning approvals

This sections requests input into the exemption of development authorized under the *Planning Act* from requiring a permit under the *Conservation Authorities Act*.

OFA is concerned with full exemptions from permits anywhere in the province. We are apprehensive that the removal of some of the oversight currently provided by conservation authorities may lead to nearby properties being negatively impacted. What consideration does this proposal afford to the potential negative impact on nearby (not just adjacent) properties? What mechanisms will be put in place for neighbouring properties to ensure that negative impacts to their property are remedied by the new development? It must not be left up to the impacted property owner to have to pursue a solution and / or legal action to remedy a problem that would not occur if appropriate checks and balances are in place prior to development. Who retains the liability of damages to neighbouring properties – is it the developer or the new owner of the affordable housing who likely does not have the resources to remediate and prevent further damage? Or is the liability with the Ontario government that permitted the development to occur without ensuring appropriate protections are in place? We are opposed to changes that expose our members to increased risk, including risks related to water quality or quantity for both surface and/or groundwater. This potential threat of harm to our members is exemplified by the removal of the ability to appeal decisions to the Ontario Land Tribunal.

OFA highly recommends further public consultation when a draft regulation is developed, prior to its implementation. This includes continued discussions with the agricultural community.

With the potential of an additional two million residents calling Ontario home within the next ten years, it remains imperative to ensure our agricultural production and systems remain intact and functioning efficiently and effectively. Farmland is a finite resource that cannot be reclaimed once it is lost to development.

On behalf of OFA's more than 38,000 family farm businesses, I thank you for this opportunity to express OFA's perspectives on the "Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario". We look forward to the incorporation of our recommendations and advice in changes to the relevant legislation and regulations of the day-to-day operations of Ontario's Conservation Authorities.

Sincerely,



Peggy Brekveld
President

cc: The Honourable Graydon Smith, Minister of Natural Resources and Forestry
The Honourable Steve Clark, Minister of Municipal Affairs and Housing
The Honourable Lisa Thompson, Minister of Agriculture, Food, and Rural Affairs
OFA Board of Directors