



HEALTHY COMMUNITIES • SUSTAINABLE COMMUNITIES

October 19, 2015

Ms. Julia Holder
Policy Analyst
Ministry of Natural Resources and Forestry
Policy Division
Natural Resources Conservation Policy Branch
Water Resources Section
300 Water Street
Peterborough, ON K9J 8M5

**Conservation Authorities Act Review
EBR Registry Number 012-4509**

Dear Ms. Holder,

On behalf of the Ontario Professional Planners Institute (OPPI), I am submitting the Institute's response with regards to the Province's review of the Conservation Authorities Act – EBR Registry Number 012-4509.

OPPI is the recognized voice of the Province's planning profession. Our more than 4,000 members work in a range of Government Ministries and agencies, including municipalities and conservation authorities, and in private practice, in fields that include urban and rural development and environmental planning. The OPPI members who contributed to this review have regular professional involvement in the interactions between conservation authorities and the development process, and in their conservation and regulatory activities. OPPI members meet quality practice requirements and are accountable to OPPI and the public to practice ethically and to abide by a Professional Code of Practice. Only Full Members are authorized by the Ontario Professional Planners Institute Act, 1994, to use the title "Registered Professional Planner" (or "RPP").

In preparing our response, we have considered the questions put forward in the Province's Conservation Authorities Act Review Discussion Paper and have responded from a perspective that reflects the interrelationships between the responsibilities and activities of conservation authorities and land use planning.

We would also take this opportunity to highlight the following recent submissions that OPPI has provided that reinforce a number of the comments within this submission:

- Coordinated Provincial Plan Review (EBR # 12-3256)
- Climate Change Discussion Paper (EBR#0123452)

Since their inception, conservation authorities have taken on an essential role in watershed and natural heritage conservation as expert reviewers participating in the development review process, and in regulating development in relation to hazards and flood control and the conservation of land.

Our comments are intended to encourage changes to the legislation and the regulatory framework that will:

- Assist in clarifying the role of conservation authorities and their relationship with other government agencies and participants in the development process.
- Encourage consistency and transparency in the implementation of the regulatory process in keeping with other processes in the development sector (under the Planning Act, for example).
- Ensure that conservation authorities have the resources and support to undertake their current mandate and to take on an effective role in working with municipalities, government ministries and agencies in a coordinated response to climate change.
- Provide for further enhancement of the role of conservation authorities as leaders in sustainability through their own practices, as well as in relation to their conservation and regulatory roles.

We respond to the Discussion Paper questions, where appropriate, as follows.

1. Governance

a. What aspects of the current government model are working well?

The overall conservation authority governance model and its essential components, including watershed-based jurisdictions, local decision-making that includes component local municipalities, and cost sharing are working well and should be retained.

b. What aspects of the current governance model are in need of improvement?

Conservation authorities have identified a need for a greater level of coordination and integration in the relationships between conservation authorities and provincial government ministries and OPPI supports this concern. If one Ministry is to be selected to be the lead in terms of relationships between the provincial government and conservation authorities, we suggest that it be the Ministry of the Environment and Climate Change (MOECC). We believe that the MOECC has a greater affinity with the scope of activities performed by conservation authorities than, for example, the Ministry of Natural Resources and Forestry (MNRF) or the Ministry of Municipal Affairs and Housing (MMAH), particularly as the issue of climate change gains in prominence.

2. Financing

- a. How well are the existing funding mechanisms outlined within the Act working? and;**
- b. What aspects of the current governance model are in need of improvement?**

We are concerned about the widely varied levels of resources available to different conservation authorities and that the resources available to individual authorities depend to a large extent on levels of urbanization and development activity, rather than a broader assessment of need. This is already resulting in “have-not” authorities that have only minimal levels of resources and expertise available to them as compared to others. This results in wide differentials in levels of service and protection. We understand that some conservation authorities are undertaking logging on their land holdings in order to generate income. The mismatch between need and resources will likely be exacerbated in the future as conservation authorities take on greater responsibilities for both mitigation and adaptation that will likely arise out of the proposed climate change strategy. Coordination among conservation authorities and other government agencies needs to be strengthened to ensure that conservation authorities have the support and resources required to respond to these challenges.

Since conservation authorities produce benefits in implementing both local and provincial policy, the funding model should draw from both municipal and provincial sources, as well as the other sources outlined in the Discussion Paper. Funding from the provincial level could, for example, provide sustainable support to assist with operational requirements associated with implementing provincial policy and functions downloaded to conservation authorities over time (often through municipalities) and should not be limited to special projects.

It has been suggested that conservation authority development charges could be one funding source. If development charges are to be applied they should be reflective of actual costs and based on a consistent formula. Revenue from the province’s proposed carbon pricing scheme is one possible source of funds for the support of climate change programs.

- c. In terms of governance, what should be expected of:**
 - a. the board and its members?
 - b. the general manager or chief administrative officer?
 - c. municipalities?
 - d. the Ministry of Natural Resources and Forestry?
 - e. other provincial ministries?
 - f. others?

These matters fall mostly outside the land use planning mandate of OPPI, however, where they are relevant, they are dealt with elsewhere in this response.

3. Roles and Responsibilities

a. What resource management programs and activities may be best delivered at the watershed scale?

The watershed scale is the appropriate scale for the management of surface and groundwater, including watershed/subwatershed planning, water quality monitoring and modeling, natural hazards management and regulation, natural resource-based technical input and review for municipal land use planning and development, and the use of conservation authority land holdings for outdoor education and recreation.

OPPI would support a change to the conservation authority “objects” in Section 20 of the Act to include text with regard to “protect and restore the ecological health of the watershed(s)” encompassed by the conservation authority. Wording could also be included to reflect conservation authorities’ role in flood remediation.

b. Are current roles and responsibilities authorized by the *Conservation Authorities Act* appropriate? Why or why not? What changes, if any, would you like to see?

Provincial/conservation authority coordination

The province has a vital role to play in providing the leadership, momentum and economies of scale required for the broad scale science, baseline data, overall policy, standards, and methodologies required to support conservation authority activities. In particular, a consistent hydrological modelling tool is required to respond to climate change, rather than the separate and often inconsistent initiatives that have occurred to date.

At the same time, conservation authorities should retain a degree of flexibility in applying these inputs to local circumstances. To help facilitate this, the review of the Conservation Authorities Act should clarify the respective roles of the MNRF (or other lead ministry such as the MOECC, as suggested above) and the conservation authorities, and should provide for a more coordinated relationship between conservation authorities, provincial ministries and agencies.

Legislative and Policy Harmonization

There is also a need to clarify the role of conservation authorities under the Planning Act and the Provincial Policy Statement, and other land use-related legislation and plans such as the Oak Ridges Moraine Conservation Plan, the Niagara Escarpment Plan, the Greenbelt Plan and the Growth Plan.

The legal question as to whether a conservation authority is a “local board” for the purposes of Sections 3(5) and 3(6) of the Planning Act (and therefore, Section 4.2 of the Provincial Policy Statement (PPS)) needs to be resolved. It would be desirable to clarify whether conservation authorities are actually subject to these two sections with respect to their decisions and comments, and if they are, to what extent. While many believe the “local board” definition would apply, others disagree and it would be helpful if this were more explicitly set out.

As a regulatory authority for local resource management, and to be reflective of local needs and geography, the board of each authority sets regulatory policies and practices. Authorities use these board-approved policies in their roles of providing comments on planning matters, and in their role as permitting bodies under the ‘Development, Interference with Wetlands and Alterations to Shorelines and Watercourses’ regulations. There is a need, however, to eliminate any overlap between board-approved policies and the roles and responsibilities of other levels of government, in particular those of the MOECC, MNRF and Fisheries and Oceans Canada. Such overlap may result in comments being provided by a body that does not have authority over, or adequate expertise in, a particular natural resource matter.

Board-approved policies across authorities also reflect different philosophies of resource management and different understandings of the technical ability of development and infrastructure to comply with the policies. OPPI supports the continuing efforts of conservation authorities and others to achieve greater consistency.

Implementation of Regulations under Section 28

To avoid inconsistency with municipal powers under the Planning Act and the Building Code Act, regulatory prohibitions under the Conservation Authorities Act and regulations should be exercised in accordance with recent legal precedents – i.e., prohibition only if the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will be affected by the development. If further changes to the Act or Regulations are required to confirm or clarify this, then the required redrafting should be done. Where conservation authorities provide comments to municipalities on planning applications (or environmental assessments), there should be a clear distinction between comments on natural heritage under the PPS and the separate exercise of authority under the regulations over hazard land and wetlands, especially where flooding is the issue under consideration. At the same time, the enforcement capabilities of conservation authorities in instances where regulatory requirements are not being met should be enhanced through the ability to issue stop work orders, and through review of other aspects of enforcement capabilities and their effectiveness.

The definitions in the Conservation Authorities Act should be reviewed for opportunities to enhance consistency with the overall provincial planning framework (such as the “wetland” definition in the PPS) and to introduce new definitions (such as “conservation of land”).

a. How may the impacts of climate change affect the programs and activities delivered by conservation authorities? Are conservation authorities equipped to deal with these effects?

We have discussed the need for coordinated provincial support for conservation authority responses to climate change in item 2(b) above.

There needs to be greater coordination between municipal zoning and flood plain regulations and policy especially where our changing understanding of runoff events applies. This is especially the case where zoning by-laws are dated and where flood plain mapping, which takes precedence over zoning, has been or will be updated to address changing design storm standards and our understanding of the effects of climate change. Sometimes existing zoning by-laws indicate development rights but the conservation authority prohibits development or creates long delays in the approval process based on its regulatory powers. Emphasis should be placed on helping municipalities coordinate with MNRF (or other lead ministry) and conservation authority staff to ensure consistency between zoning and Conservation Authorities Act regulations.

Climate change adaptation will be a special concern in urban settings where the two zone concept is applied and in rural areas with extensive floodplains that affect large areas. Changing design storm modelling and standards, particularly where our understanding of climate change induced change applies, will require particular attention. These higher-level decisions should be made collaboratively between MNRF, municipalities and Conservation Authorities.

OPPI members have expressed a need for greater openness and public involvement in implementing the Section 28 process, particularly in relation to larger applications. We support the conclusions of the Environmental Commissioner of Ontario (ECO) in his 2009/10 annual report (supplement, p. 296), that permits be prescribed as instruments under the *Environmental Bill of Rights* and that opportunities for public involvement in the issue of permits be improved.

A difficulty has also been identified in dealing with Section 28 applications submitted by smaller-scale applicants who do not, for example, have the resources or expertise that can be applied by larger developers. Procedures need to be developed to assist smaller landowners to navigate the planning and authority regulation processes, especially where administrative costs are being levied by conservation authorities and municipalities for permit and Planning Act reviews. Development of “complete application” requirements, similar to those

utilized under the Planning Act, would assist all proponents in navigating the process. These requirements should be responsive to the scale and level of complexity of the application, perhaps by establishing “classes” of permits.

d. Is the variability in conservation authorities’ capacity and resourcing to offer a range of programs and services a concern? Should there be a standard program for all authorities to deliver? Why or why not?

We have responded to this issue under item 2.

- e. What are some of the challenges facing conservation authorities in balancing various roles and responsibilities? Are there tools or other changes that would help with this?**
- f. Are there opportunities to improve consistency in service standards, timelines and fee structures? What are the means by which consistency can be improved? What are some of the challenges in achieving greater consistency in these areas?**

We have responded to these issues elsewhere in our submission.

4. Are there other areas, questions or concerns regarding the *Conservation Authorities Act* or conservation authorities in general that you feel should be considered as part of the review?

The work of conservation authorities in Ontario is important, both in their conservation role and in their involvement in the development process. We suggest that the success or lack thereof of any changes implemented as a result of this review process be monitored and adjusted through regular review.

Conservation authorities should become leaders in providing an example to all Ontarians, not only in watershed planning and management, but also in how they conduct their own business, including managing land and buildings, including application of ISO 140001, Leadership in Energy and Environmental Design (LEED), and Low Impact Development (LID) etc. practices and being champions of this for all development in the Province. Some are already doing this but coverage is not consistent.

There is a need for improved provision for public transit service and active transportation access to conservation authority lands in and near urban centres so that personal vehicle ownership or access to one is not a prerequisite for accessibility. Together with review of user fees and meeting Accessibility for Ontarians with Disabilities Act (AODA) requirements, this would truly open conservation areas to Ontarians of all ages, abilities and socio-economic backgrounds. Transit accessibility should be a significant consideration in locating conservation authority offices in and near urban areas (i.e. where service is available). In terms of the administrative functions of conservation authorities,

use of electronic communications or satellite offices for the receipt and processing of applications would minimize the need for travel.

OPPI supports the Province's efforts to improve and update the Conservation Authorities Act. We welcome the opportunity to meet with you and your staff to discuss our submission and answer any questions that you may have. To schedule a meeting or for further information, please contact me at 416-668-8469 or by email at l.ryan@ontarioplanners.ca

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Ryan', followed by a horizontal line.

Loretta Ryan, MCIP, RPP, CAE
Director, Public Affairs
Ontario Professional Planners Institute