

May 21, 2019

**BY EMAIL & REGULAR MAIL**

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Dear Ms O'Neill and Mr McLeod:

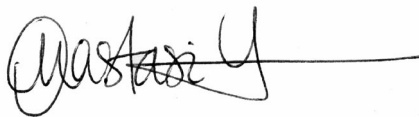
**RE: Conservation Authorities Modernization (Operations and Permitting)**  
**ERO Numbers: 013-5018 and 013-4992**  
**Schedule 2, Bill 108**

Attached please find our submission for Environmental Registry of Ontario postings #013-5018 (including Schedule 2, Bill 108) and #013-4992.

The Canadian Environmental Law Association and Environmental Defence Canada put forward the attached submission with the endorsement of the undersigned 11 individuals and 18 organizations.

We trust our recommendations will be duly considered and urge both the Ministry of the Environment, Conservation and Parks and the Ministry of Natural Resources and Forestry to consider the potential impacts of these proposed amendments to the health of Ontario's watersheds, our climate resilience, and to ecological wellbeing.

Sincerely,



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Don Ross, Board Member, County  
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Jill Ryan, Executive Director, Freshwater Future Canada



Sandy Agnew, President, Simcoe County Greenbelt Coalition



Linda Heron, Chair, Ontario Rivers Alliance



Patrick Nadeau, Executive Director, Ottawa Riverkeeper

Mark Bartlett, President  
Unifor Windsor Regional Environment Council

Attachment

## SUBMISSION

**Conservation Authorities Modernization (Operations and Permitting)  
ERO Numbers: 013-5018 and 013-4992  
Schedule 2, Bill 108**

Authored by:

Anastasia M Lintner, Special Projects Counsel, Healthy Great Lakes  
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May 15, 2019

This submission represents our comments to date regarding two Environmental Registry of Ontario (ERO) proposals - “Modernising conservation authorities operations – Conservation Authorities Act” ([ERO Number: 013-5018](#)) and “Focusing conservation authority development permits on the protection of people and property” ([ERO Number: 013-4992](#)). It also contains our preliminary comments regarding Schedule 2, Bill 108, the proposed More Homes, More Choices Act, 2019. We reserved the right to provide further comment during the legislative process regarding Bill 108.

### Overview

On April 5, 2019, two proposal notices regarding conservation authorities modernization (operations and permitting) were posted to the Environmental Registry of Ontario (ERO) for public comment. In a [news release](#) on the same day, it was stated, “These recommended changes are part of Ontario's commitment to support conservation and environmental planning and improve Ontario's resilience to climate change.”

A week later, Conservation Ontario received the news that the province will cut the natural hazards funding in half (from \$7.4million shared across Ontario's 36 conservation authorities) as a result of the 2019 budget entitled “[Protecting What Matters Most](#)”.

On May 2, 2019, [Bill 108, the proposed More Homes, More Choices Act, 2019](#) was introduced for first reading. Schedule 2 of Bill 108 proposes amendments to the *Conservation Authorities Act*. We are deeply disappointed that amendments to the *Conservation Authorities Act* were tabled in the Ontario Legislature, well before the close of the public consultation (ERO Number: 013-5018 comments are due May 20, 2019 and ERO Number: 013-4992 comments are due May 21, 2019). The *Environmental Bill of Rights, 1993* (EBR) requires that a Minister shall do

everything in his or her power to ensure that there will be at least 30 days of notice before a proposal is implemented<sup>1</sup> and that the Minister shall consider giving more than 30 days of notice for proposed legislative changes to permit “more informed public consultation”<sup>2</sup>. Further, the EBR requires that a Minister “shall take every reasonable step to ensure that all comments” received “are considered when decisions about the proposal are made in the ministry”<sup>3</sup>. These statutory requirements are not being met in the Ministry of the Environment, Conservation and Parks proposals regarding changes to the *Conservation Authorities Act*.

Further, and contrary to the media statement on April 5, 2019, Bill 108 is not aimed at improving Ontario’s resilience to climate change, rather (as the preamble states):

The government’s vision is that all people and their families find a home that meets their needs and budget. The best way to achieve this is to increase housing supply by: ...

Giving municipal government greater authority over conservation authorities to make them more accountable;

Debate on second reading of Bill 108 has emphasized the government’s focus on “speed, cost, mix, rent and innovation.”<sup>4</sup> Specifically, the government wishes to increase speed and reduce cost of development through so-called “red tape reduction”:

We need to turn things around. The proposed legislative amendments I will be speaking to today would, if passed, help bring more housing, more quickly, to our province. They include changes to the Planning Act and the Development Charges Act, along with an impressive suite of legislative policy and regulatory changes that will support our robust plan to address development challenges in Ontario.<sup>5</sup>

We are taking a whole-of-government approach to this file. Legislation administered by several ministries across government impacts housing development. We can’t just fix the problem by changing one act. We have to fix the system, and we have to reduce duplication and unnecessary delays so that it works more efficiently.<sup>6</sup>

We strongly encourage the Ministries to hold fulsome and meaningful public consultations, aimed at ensuring that the proposed budgetary, legislative, and any future regulatory changes meet the desired vision of improving Ontario’s resilience to climate change. Until such time as a full assessment of the proposed changes is complete, we call on the government to delay enacting Bill 108, Schedule 2.

**Recommendation 1: Delay enacting Bill 108, Schedule 2 until fulsome and meaningful public consultations, aimed at ensuring that the proposed budgetary, legislative, and any**

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<sup>1</sup> [Environmental Bill of Rights, 1993, SO 1993, c 28](#), s 15(1).

<sup>2</sup> *Ibid.*, s17(1).

<sup>3</sup> *Ibid.*, s35(1).

<sup>4</sup> Ontario, Legislative Assembly, Hansard, [42nd Parl, 1st Sess, No 103 \(8 May 2019\)](#) at 4846 (Hon Steve Clark).

<sup>5</sup> *Ibid.* at 4845 (Hon Steve Clark).

<sup>6</sup> *Ibid.* at 4848 (Hon Steve Clark).

**future regulatory changes meet the desired vision of improving Ontario’s resilience to climate change have been undertaken.**

### Conservation Authority Operations

One proposal is from the Ministry of the Environment, Conservation and Parks (MECP), titled “Modernising conservation authorities operations – Conservation Authorities Act” ([ERO Number: 013-5018](#)). Comments are due May 21, 2019 and are to be directed to Carolyn O’Neill in the Great Lakes Office ([glo@ontario.ca](mailto:glo@ontario.ca)).

The ERO notice indicates that amendments will be proposed to the *Conservation Authorities Act* that are aimed at:

- Clearly distinguishing between the conservation authority’s core mandatory programs and services and non-mandatory programs and services, the latter to be transitioned to having agreements with relevant municipalities (eg, over 18 – 24 months).
- Creating more transparency in conservation authority levies, particularly providing for a regular review (eg, every 4 – 8 years) for non-mandatory programs and services.
- Providing for greater scrutiny (eg, give the Minister the ability to appoint an investigator) and accountability (eg, clarifying the duty of conservation authority boards to act in the best interests of the conservation authority, as is the case for non-profit organizations).

The “core mandatory programs and services” will be limited to natural hazards protection/management, conservation/management of conservation authority lands, drinking water source protection and Lake Simcoe watershed protection.

The notice suggests that various yet-to-be-proclaimed provisions from the 2017 amendments will be brought into force, including fees for programs and services, approval of projects with provincial grants, recovery of capital costs and operating expenses from municipalities, regulation related to conservation authorities jurisdiction, enforcement and offences, and additional regulations.

### *Analysis – Conservation Authority Operations*

In describing the mandatory programs and services, the notice uses the term “as prescribed by” the legislation enabling drinking water source protection ([Clean Water Act, 2006](#)) and enabling Lake Simcoe watershed protection ([Lake Simcoe Protection Act, 2008](#)). Using this term in amendments to the *Conservation Authorities Act* may inadvertently limit the complementary programs and services that conservation authorities provide in aid of safeguarding drinking water and the Lake Simcoe watershed.

Further, with respect to the division of programs and services into mandatory versus non-mandatory, consideration must be given to all provincially mandated conservation authority responsibilities (conservation authorities are mentioned in numerous statutes). Specific mandatory programs and services will be set out in a future regulation, and will be limited to those that are within the identified categories: natural hazards protection/management, conservation/management of conservation authority lands, drinking water source protection and Lake Simcoe watershed protection (proposed s21.1(2), 21.1(3)). Similarly, programs and services will be mandated to be provided in accordance with standards and requirements set out in future

regulations (proposed s21.1(3)). Non-mandatory programs and services will be enabled through memorandums of understanding with municipalities (proposed s21.1.1) or, if the conservation authority determines a program or service is “advisable to further its objects” and funding from municipalities is required, through agreements with municipalities as set out in future regulations (proposed s21.1.2). The proposed amendments also contemplate a transition plan related to funding agreements with municipalities (proposed s21.1.3) and consultations regarding programs and services, the details of which will be set out in future regulations (proposed s21.1.4).

The notice also includes as mandatory the conservation and management of “conservation authority lands”. This is a legally defined term: “conservation authority land means land owned by a conservation authority” (s1, [Conservation Land Act](#)). Limiting core programs and services related to conservation and management only to those lands owned by conservation authorities will be a lost opportunity for leading integrated watershed management and climate change resilience.

With the recent announcement of a dramatic reduction in the natural hazards transfer payment, there is concern about how the necessary funds will be raised to ensure that the core (and provincially mandated) programs and services will be provided adequately across all conservation authorities.

Transparency and accountability in conservation authorities operations is something that has been discussed over a number of years. We are supportive of moving forward on implementation. In particular, we are supportive of identifying the duty of conservation authority boards to act in the best interests of the conservation authority (proposed s14.1). The proposed amendments also contemplate the ability for the Minister to appoint an investigator or investigators to conduct an investigation of a conservation authority’s operations and require that the conservation authority pay (all or part of) the cost (proposed s23.1(4)-23.1(8)). The as yet to be proclaimed provisions relating to recovery of capital costs and operating expenses will be amended to prohibit the apportionment of non-mandatory programs, except by agreement with municipalities, after a date to be set by regulation (proposed s25(1.1)-25(1.3) and s27(1.1)-27(1.3)). There will be new provisions related to determining amounts owed by municipalities to conservation authorities as a result of programs and services related to drinking water source protection and Lakes Simcoe protection (proposed s27.1). As we submitted in relation to proposed amendments to the *Conservation Authorities Act* in 2017:

... we have serious concerns about the number of provisions that will not come into force until a date to be proclaimed by Cabinet, the extent to which the new amendments will require regulations before the intention of those provisions can be realized, and the lack of a clear commitment to increased resources to accompany the increased provincial oversight and enhanced CA responsibility.<sup>7</sup>

Although there are some additional details in this proposal, our concerns remain equally relevant now as they were in 2017.

Finally, we suggest that regular review of non-mandatory programs and services be done on a cycle that is sufficiently long to be able to assess progress and does not directly coincide with the

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<sup>7</sup> Submission dated July 26, 2017 re [Proposed amendments to the Conservation Authorities Act as part of Bill \(139\), the Building Better Communities and Conserving Watersheds Act, 2017; EBR Registry Number 013-0561](#).



municipal election cycle (eg, so that the review is not happening at the exact same time as new board members are being orientated to their conservation authority's programs and services).

**Recommendation 2: Ensure that legislative amendments to the *Conservation Authorities Act* do not hamper or limit the ability of conservation authorities to develop and deliver watershed-wide programs and services aimed at Ontario's climate resilience.**

**Recommendation 3: Provide additional details related to the timing of bringing various new provisions into force, as well as the content and development of future regulation(s).**

**Recommendation 4: Provide adequate resources for conservation authorities to achieve the goal of climate resilience across Ontario's watersheds.**

### Conservation Authority Development Permits

A second proposal is from the Minister of Natural Resources and Forestry (MNRF), titled "Focusing conservation authority development permits on the protection of people and property" ([ERO Number: 013-4992](#)). Comments are due May 21, 2019 and are to be directed to Alex McLeod in the Natural Resources Conservation Policy Branch ([alex.mcleod@ontario.ca](mailto:alex.mcleod@ontario.ca)).

Conservation authorities are the only agency in Ontario that hold deep expertise in watershed features and health. This expertise has been acquired through decades of extensive stewardship, monitoring, research, mapping and on-the-ground contact with the watershed resources and stakeholders in the regions in which they operate. There is no other agency, Ministry, or entity in Ontario with the same comprehensive understanding of integrated watershed management (IWM).

The proposed changes will severely limit conservation authorities' ability to achieve effective IWM in order to prevent hazards from flooding, and achieve sustainable outcomes for watershed health in the province. The consequences of these changes include severed watershed management, increased risk of flooding, loss of coordination among stakeholders and agencies, along with severe degradation of ecological health and water quality in our headwaters, lakes, rivers, and wetlands of the Great Lakes basin.

### *Integrated Watershed Management*

IWM is based on the perception of water as an integral part of the ecosystem, a natural resource and social and economic good<sup>8</sup>. IWM provides direction to human activities in order to protect and rehabilitate water, the aquatic and terrestrial health and the social and economic resources and assets in the watershed. Through an IWM model, conservation authorities are able to achieve coordinated development and management of water and land resources that protects people and property, as well as the health of ecosystems upon which our societies and economies rely.

Conservation authorities provide services and deliver programs in their regions in order to achieve these goals of protecting people and property. Effective IWM includes not only flood

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<sup>8</sup> [https://conservationontario.ca/fileadmin/pdf/policy-priorities\\_section/IWM\\_OverviewIWM\\_PP.pdf](https://conservationontario.ca/fileadmin/pdf/policy-priorities_section/IWM_OverviewIWM_PP.pdf)

mapping, mitigation and hazard protection but must also include programs and services such as wetland protection, climate change mitigation, biodiversity health and land use planning.

Further, in his Part Two Report of the Walkerton Inquiry, the Honourable Dennis O'Connor stressed the need to have a comprehensive approach to watershed management:

Because drinking water source protection is one aspect of the broader subject of watershed management, it makes the most sense in the context of an overall watershed management plan. In this report, I restrict my recommendations to those aspects of watershed management that I think are necessary to protect drinking water sources. However, **I want to emphasize that a comprehensive approach is needed and should be adopted by the Province. Source protection plans should be a subset of broader watershed management** (emphasis added).<sup>9</sup>

The Ministry's proposal to "further define" conservation authority jurisdiction, and amend or add definitions for "wetland", "watercourse", "pollution", "interference and conservation of land" will severely limit conservation authorities' ability to carry out their mandate in protecting people and property through IWM. The existing five tests of pollution and conservation under existing development regulation are necessary in order to holistically evaluate the risk a development poses to the watershed and to people and property. The proposed changes would severely limit or eliminate conservation authorities' role in environmental protection and IWM. By association, this will further limit their ability to focus on protected lands and natural hazards, as the framework for evaluation would be left severed and unclear.

Further to this, we also note that the Ministry's proposal to "better align" the definitions of wetlands, watercourses and pollution "with other provincial policy" is extremely problematic. It is impossible to derive definitions or standards that align with provincial policy, because Ontario currently lacks any coherent watershed management, flood protection, pollution or environmental management regulation for wetlands and watercourses outside of those in the *Conservation Authorities Act*. The most recent Ontario strategy on wetlands published in 2017 is the only other provincial proposal on wetland management, and it states quite clearly that a landscape-based, ecosystem management and IWM approach must be included in any regulatory regime that is to be effective<sup>10</sup>.

Limiting the scope of conservation authorities in Ontario, as proposed by this notice and in Bill 108, Schedule 2 is counterproductive to the goal of protecting people and property from flood hazard and mitigation. Holistic and well implemented IWM requires a multi-disciplinary approach that includes in depth on-the-ground knowledge of watershed features including wetlands and ecosystem services. The only agencies with this knowledge in Ontario are conservation authorities. Therefore, in order to achieve the best outcomes for watershed health and for the protection of people and property, the full mandate of conservation authorities to implement IWM must be respected.

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<sup>9</sup> The Honourable Dennis R. O'Connor, [Part Two Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water](#) (2002) at pp 89-90.

<sup>10</sup> Ministry of Natural Resources and Forestry, [A Wetland Conservation Strategy for Ontario 2017–2030](#) (2017).

**Recommendation 5: Conservation authorities' five tests for development proposals must remain to include the consideration of wetlands and watercourses.**

**Recommendation 6: Conservation authorities' mandate must reflect their ability to implement effective integrated watershed management in a holistic way through their existing programs and services.**

#### *Exemption of low-risk developments*

The proposal to exempt “low-risk” developments from requiring a permit subject to the *Drainage Act* and *Conservation Authorities Act* is highly concerning. The three proposed changes to allow these exemptions will result in increased risk to the watershed to flooding hazards and other impacts. The entire purpose of the permitting process is to evaluate the level of risk and determine if the criteria for “low-risk” have been met. Without the permitting process, there is no way to determine with certainty if a proposed development is truly low-risk to the watershed and therefore to people and property.

Risks posed by a development are unique and site-specific; therefore the proper permitting evaluations must be conducted in order to know if the activity poses a risk in that specific circumstance and location. When an activity is found to have no negative impacts, it will be eligible for the permit. Therefore, there is no need for an exemption as the process already allows for a low-risk development to proceed when and only when it is proven not to have negative impacts.

By allowing exemptions without an evaluation of risk, there would be a severe reduction of oversight and allow blanket authorizations to activities that could have unknown risks to environment and to people and property. Using approximations are impossible to justify with scientific evidence when a development is not properly assessed and reviewed. In fact, these proposed changes run contrary to the government's own goals of focusing on the protection of people and property. Without a permitting process, a seemingly low-risk development could proceed and contribute to the exact flooding hazards that the Conservation Authorities are tasked to prevent. These changes will also render permitting more ambiguous, less certain and unclear to the public. This also runs contrary to the government's proposed goal to make development approvals more accessible by the public.

**Recommendation 7: There should be no, so called “low-risk”, developments exempted from development regulations and the permitting process.**

#### *Respecting Conservation Authorities*

This spring, we experienced flooding that impacted thousands of Ontarians, forcing them out of their homes and onto the streets with their neighbours sandbagging desperately to protect themselves and their homes. The proposal to limit conservation authorities' ability to deliver their programs and services is reprehensible. We know that in the coming years, floods will become

more frequent and more severe, costing our province billions and risking human life<sup>11</sup>. The above changes are a step in the wrong direction. If the province is serious about protecting people and property from the hazards of flooding, they will respect conservation authorities in their delivery of programs and services in an IWM approach.

Conservation authorities are the only agencies in Ontario that can protect us from the severe impacts of flooding and advance watershed health to the benefit of our society, economy and environment. For this reason, the recent announcement to cut provincial transfer payments for flood hazard mitigation to conservation authorities is alarming. Conservation authorities need stable and adequate funding to deliver on their mandate regardless of the changes proposed in this registry notice or in Bill 108, Schedule 2. The reduction in Ontario's transfer payments to conservation authorities for flood mitigation is wholly inconsistent with the proposed changes, or their claims to want to prioritize the protection of people and property.

**Recommendation 8: Adopt a stable funding model to allow conservation authorities to fully exercise their development oversight function independently.**

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<sup>11</sup> Insurance Bureau of Canada, et al., [Combatting Canada's Rising Flood Costs: Natural infrastructure is an underutilized option](#) (2018).