

Conservation Authorities and Natural Hazards Section  
Ministry of Natural Resources and Forestry - RPDPB  
300 Water Street  
2nd Floor South Tower  
Peterborough, ON  
K9J 3C7

May 5, 2024

**Re: ERO: 019-8320**  
**Regulation detailing new Minister's Permit and Review powers under the *Conservation Authorities Act***

Please find enclosed a copy of comments on the proposed regulation. Original text from the posting has been included in *italics* and comments are indicated in **bold**.

### ***Proposal Summary***

*We are proposing a regulation specifying the circumstances under which the Minister may issue an order to prevent a conservation authority from making a permitting decision and make the permitting decision in the place of a conservation authority or may undertake a review of a conservation authority permitting decision.*

### ***Proposal Details***

*Conservation authorities regulate development and other activities through a permitting process under the Conservation Authorities Act for the purposes of natural hazard management and to protect people and property from natural hazards, such as flooding and erosion. Each conservation authority implements the permitting framework based on provincial legislation, regulatory requirements and technical standards, as well as conservation authority board-approved policies that outline how the conservation authority administers regulations locally.*

*Recently proclaimed provision in the Conservation Authorities Act and associated regulations came into effect on April 1, 2024, including new powers for the Minister to 1) issue and order to prevent a conservation authority from issuing a permit and to take over the permitting process in the place of a conservation authority, and 2) review a conservation authority permit decision at the request of the applicant.*

*The Ministry is proposing a regulation which would set out the circumstances under which these powers could be used. If the regulation is approved, public guidance would be made available on the criteria and processes outlined in the regulation.*

### **Comments:**

- **Under what circumstances would the provincial government prevent the Conservation Authority from issuing a permit? This legislation has the appearance of government intervention over that of private interests and due process. Conservation Authority permits are issued based on meeting specific criteria - namely policies based on provincial guidelines. A permit is issued once those policies are met. This legislation**

has the appearance of the provincial government interfering with a process that should be relatively straightforward. It is unclear why such a regulation has been written.

- Further, the regulation gives the impression that a shadow or mirror agency is being created which could be perceived or be redundant and possibly a waste of taxpayer dollars. More information about the function of the overseeing of a permitting process should be addressed in order to be clear and transparent.
- Requesting the province to review a permit decision gives multiple appeal options and makes the process much more confusing to proponents (should one appeal to the CA Board and go to the OLT or request a Minister's review - which to choose?)
- Based on the information provided, it is recommended that better guidance documents to inform Conservation Authority permitting be created through a joint Provincial-Conservation Authority Working Group rather than the regulation as proposed.

### **1. Permits issued by the Minister**

*Existing requirements under the Conservation Authorities Act regarding permits issued by the Minister under section 28.1.1 include:*

- *The Minister may issue an order directing a conservation authority not to issue a permit to a specific individual to engage in a specified activity, or to persons who may wish to engage in a certain type or class of activity, that would be prohibited under section 28 without a permit.*

#### **Comments:**

- this is particularly dangerous and appears like government meddling to facilitate the wishes of a landowner. Optics are very concerning. It would be helpful if the regulation could provide text to justify the need for the interference of the Minister in a permit approval process that is robust and already has appropriate appeal procedures. This would assist in clarifying the need for these revisions as the current perception by the public and the agencies is one of political interference.
- *The Minister's decision to issue an order is discretionary, and it may be issued either before or after an application for a permit has been submitted to the relevant conservation authority.*

#### **Comments:**

- Again, optics are very concerning that the provincial government can arbitrarily dictate that a landowner does not have the ability to undertake activities on their property regardless of whether existing regulatory requirements can be met.
- When would the Minister feel it necessary to deny a permit review and approval that is following an effective policy framework/process. Would this interference infringe on the rights of an applicant? Would the Conservation Authority be obligated to refund the application fee in the event that the Minister interferes with the application process?

- *Notice of any order must be provided to affected conservation authorities, any person who applied for the permit in question prior to the order and be posted on the ERO within 30 days.*
- **No comment**
- *If an order made, the Minister has the power to issue a permit in place of the conservation authority. When making a permitting decision, the Minister is required to satisfy the same criteria concerning natural hazards and public safety that are considered by the conservation authorities. This includes whether the activity is likely to affect the control of flooding, erosion, dynamic beaches or unstable soil or bedrock. It also must consider whether the activity is likely to create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property.*

**Comments:**

- **In general, there is no objection that the Minister could issue a permit based on the same suite of criteria. That said, why have the legislation/regulation at all? It gives the impression that the province does not have faith in conservation authorities. Without examples or more specifics, it remains unclear why this legislation has been proposed.**
- *The Minister may refuse the permit or issue a permit subject to such conditions as the Minister determines are appropriate.*

**Comments:**

- **If the Minister refuses the permit, will there be an appeal mechanism available? Further, if the Minister refuses the permit, does that mean the proponent cannot apply to the conservation authority for a different response? Clarification is required.**
- **Should the Minister interfere with the application process and refuse and/or approve a permit application, will the regulation clarify that the liability for these decisions lies with the Minister and not the Conservation Authority? This should be explicitly indicated in the text of the regulation as hazard management decisions made by a political office with peripheral technical input will likely result in poor decisions that will have unintended consequences.**

**Proposed additional requirements that would be set out in regulation include:**

- *The Minister may make an order to prevent a conservation authority from making a permitting decision and take over the permitting process only if the development activity or type or class of permits pertains to or supports a specific provincial interest, including:*
  - *Housing (community, affordable and market-based)*
  - *Community services (health, long-term care, education, recreation socio-cultural, security and safety, environment)*
  - *Transportation infrastructure*
  - *Building that facilitate economic development or employment*
  - *Mixed use developments.*

**Comments:**

- **Optics are very concerning as mentioned previously. This is not a reasonable tool for the Province to exercise as provincial interests are already incorporated into the land use planning process at earlier stages/phases of development. If a landowner or developer is engaging in the pre-consultation process and is effectively planning their project, this regulation is absolutely unnecessary.**
- *If a proponent wishes to petition the Minister to issue an order, the proponent must submit a request to the Minister that would include information on:*
  - *Overview of proposed development*
  - *Why the Minister's involvement is requested (eg: development of provincial interest, timing/urgency, permitting process to date if applicable, other barriers and preferable to the standard process in the Conservation Authorities Act)*
  - *Indication of whether the local municipality has endorsed the project and the request for Minister's involvement (eg: by municipal letter or resolution)*
  - *status of other required project approvals including the extent of any engagement With the conservation authority in the permitting process that the applicant has had to date.*

**Comments:**

- **"preferable to the standard process in the *Conservation Authorities Act*"? The permitting process is subject to meeting specific criteria laid out by the province. Once met, a permit is issued. Otherwise, a fee is paid and a form filled out. What, beyond those items, would make such a request more preferable to the current process? This ridiculous comment should be clarified. As mentioned previously, the CA permit approval process is robust and has appropriate appeal procedures. This component of the regulation does nothing but encourage political interference and bad decision making. If a proponent is unwilling to collaborate and work with the CA to address hazard related issues, they should not be rewarded with the ability to complain to the Minister and request special treatment. This creates a culture of unprofessionalism and leads to bad decisions with unintended consequences.**

**2. *Permits reviewed by the Minister***

*Existing requirements under the Conservation Authorities Act relating to requests for review under section 28.1.2 regarding permits where there is an order made by the Minister of Municipal Affairs and Housing under section 34.1 or 47 of the Planning Act and section 28.1 regarding all other conservation authority permits include:*

- *An applicant who has been refused a permit or had conditions attached to a permit by a conservation authority to which the applicant objects can, within 15 days of receiving reasons for the authority's decision, submit a request to the Minister for the Minister to review the authority's decision. Alternatively, an applicant also has the option to appeal the authority's decision to the Ontario Land Tribunal.*

**Comments:**

- **The province should clearly outline in writing, the available options for the CAs to update policies and procedures accordingly to provide available options to the**

**proponent. Why are two appeal procedures being created? When would they be used? Why would anyone want to follow the OLT process when they can just complain to the Minister and request political interference? The Minister's office will become inundated with requests.**

- *After receiving a request, the Minister has 30 days in which to decide whether or not they intend to conduct a review. If the Minister decides to conduct the review a notice shall be posted on the ERP within 30 days of a reply indicating the Minister intends to review the decision by the Authority. If the Minister does not reply within 30 days of the request, this is deemed to indicate that the Minister does not intend to conduct a review.*

**Comments:**

- **If the regulation is passed, the Minister's office will become inundated with requests and 30 days may not be enough time to review and process all of the requests.**
- *After conducting a review, the Minister may confirm or vary the authority's decision or make any decision that the Minister considers appropriate, including issuing the permit subject to conditions.*

**Comment:**

- **Will the Minister make the amendments or direct the Conservation Authority to make any amendments? Should the Minister interfere with the application process and make amendments and/or add conditions, will the regulation clarify that the liability for these decisions lies with the Minister and not the Conservation Authority? This should be explicitly indicated in the text of the regulation.**
- *The Minister is required to base the decision on the same criteria concerning natural hazards and public safety that are considered by Conservation Authorities. This includes whether the activity is likely to affect the control of flooding, erosion, dynamic beaches or unstable soil or bedrock. It also must consider whether the activity is likely to create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property.*

**Comment:**

- **It does not seem reasonable to have duplication of efforts. This point seems to promote bureaucratic overlap. Does the Minister's office have sufficient staff with expertise and experience in these areas? If not, the option of requesting political interference will likely result in poor decisions and additional red tape.**

**Proposed additional requirements that would be set out in regulation include:**

- *The Minister may conduct a review of a CA permit decision only if the development activity pertains to or supports a development of specified provincial interest, including:*
  - *Housing (community, affordable and market-based)*
  - *Community services (health, long-term care, education, recreation socio-cultural, security and safety, environment)*
  - *Transportation infrastructure*
  - *Buildings that facilitate economic development or employment*
  - *Mixed use developments.*

*Note: this criteria would not apply to permit reviews under section 28.1.2 regarding permits where there is an order made by the Minister of Municipal Affairs and Housing under section 34.1 or 47 of the Planning Act.*

**Comment:**

- **The Conservation Authority permit process has never been a barrier to any of these provincial interests. This clause is unreasonable. Can the authors of this regulation provide any examples of where this has occurred? How would a proponent know to pursue this option?**
- *The request submitted to the Minister for a review would include information on:*
  - *Overview of proposed development*
  - *If the request related to conditions imposed by the CA to which the applicant objects, identification of the specific conditions that are subject to the request for review, the changes requested to the conditions and the rationale in support of the requested changes*
  - *If the request relates to an authority's decision to refuse a permit, the rationale in support of requesting that the Minister varies the decision and issues the permit*
  - *Why the Minister's involvement is requested (eg: development of provincial interest, timing/urgency, permitting process to date, other barriers) and preferable to alternative mechanisms in the Conservation Authorities Act*
  - *Indication of whether the local municipality has endorsed the project and /or the request for Minister's involvement (eg: by municipal letter or resolution)*
  - *Status of other required project approvals.*

**Comment:**

- **This bullet appears to indicate that this legislation is to encourage political interference and bypass a sound permitting process. The permitting process is viewed as a barrier rather than an effective hazard management tool (developed over a period of 50+ years) to protect people and property and make communities more resilient. The rationale in support of requesting that the Minister vary the decision makes no mention of how the application did not fulfill or satisfy provincial natural hazard objectives. That should be the Minister's priority but it appears that it is not.**

***Regulatory impact analysis***

*By clearly communicating the circumstances under which the Minister would consider whether to issue an order to prevent a conservation authority from making a permitting decision and to make permitting decisions in place of a conservation authority or to review a conservation authority permitting decision, this proposal would ensure that development proponents pursue the appropriate permitting channel. Efficiently navigating the permitting process is expected to help save proponents time and resources. We expect that there will be some minor administrative costs for development proponents based on the time needed to learn about and understand the proposed changes.*

**Comment:**

- **The circumstances do not appear to be "clear" and this regulation seems to be further muddying the process. Many proponents already do not understand the Conservation**

**Authority permitting process. This proposed regulation should be scrapped, and improvements made to the existing appeal process. Political interference rarely results in good land use planning or natural hazard management decisions.**

## **Summary**

As noted above, the optics associated with the proposed regulation are very concerning and compromise an effective permit process with a clear and robust appeal procedure which has been developed over a period of 50+ years. This regulation is disrespectful of the great work that the Conservation Authorities do in protecting Ontarians and ensuring that communities grow in a responsible manner, resilient to the impacts of flooding, erosion and a changing climate.

The tact and approach currently being taken by the province is very concerning as decisions are being made in a unilateral manner without sufficient input and collaboration from Conservation Authorities.

The proposed regulation should be scrapped as it is unnecessary. It is strongly recommended that Minister Smith reconsider reconvening the Conservation Authorities working group (see previous collaborative approach suggested by Minister Yurek via link below) so that meaningful dialogue and collaboration can occur with CA staff so that the province can make better decisions in the area natural hazard management.

<https://news.ontario.ca/en/release/59694/ontario-announces-working-group-to-better-focus-conservation-authorities>

Conservation Authority experts are available to assist and support the province and Minister such that provincial priorities can be implemented quickly and responsibly at the regional and local levels. Failure to collaborate on these important issues results in wasted time and resources, failure to achieve meaningful results, and diminishes political capital.

I submit these comments with deep respect and sincerity.

Best regards,

Concerned citizen