

REPORT TO: Conservation Halton Board

REPORT NO: # CHB 03 24 17

FROM: Kellie McCormack, Director, Planning & Regulations

DATE: April 18, 2024

SUBJECT: Environmental Registry of Ontario Posting (ERO No. 019-8320):
Regulation detailing new Minister's Permit and Review Powers under the
Conservation Authorities Act
CH File No.: AADM 436

Recommendation

THAT the Conservation Halton Board **directs staff to send this report as Conservation Halton's submission to the Province on Environmental Registry of Ontario No. 019:8320 "Regulation detailing new Minister's Permit and Review Powers under the *Conservation Authorities Act*";**

And

THAT the Conservation Halton Board **receives for information the staff report entitled "Environmental Registry of Ontario Posting (ERO No. 019:8320): Regulation detailing new Minister's Permit and Review Powers under the Conservation Authorities Act".**

Executive Summary

On April 1, 2024, proclaimed provisions in the *Conservation Authorities Act* (CA Act) and associated regulations came into effect. These provisions include new powers for the Minister of Natural Resources and Forestry to:

1. Issue an order to prevent a Conservation Authority (CA) from issuing a permit and to take over the permitting process in the place of a CA; and
2. Review a CA permit decision at the request of the applicant.

On April 5, 2024, the Province posted a proposal for a regulation on the Environmental Registry of Ontario (ERO No. 019-8320) to specify the circumstances under which these Ministerial powers can be used. Some of the key implications of the proposal include that:

1. Decision-making could become political rather than technical and could result in an increased risk to life and property;
2. Local decision-making could be circumvented; and
3. More confusion and time delays could be introduced into the development approval process.

Staff recommends that the Province pause advancing the regulation and engage in focused discussions with CAs to identify possible modifications to the proposal that could clarify and refine the process and scope. Further, the Province should consider other approaches and solutions that would support not only the Province's goals, but also solve the challenges that CAs and municipalities face and that can lead to delays in the development approval process.

Report

In November 2020, the Province released Bill 229: *Protect, Support and Recover from COVID-19 Act (Budget Measures)*. Bill 229 included amendments to the CA Act to 'improve transparency and consistency in conservation authority operations, strengthen municipal and provincial oversight and streamline conservation authority roles in permitting and land use planning'. Many of these legislative changes were not proclaimed at that time, nor were the associated enabling regulations released.

On April 1, 2024, proclaimed provisions in the CA Act and associated regulations came into effect, including new powers for the Minister to:

1. Issue an order to prevent a CA from issuing a permit and to take over the permitting process in the place of a CA; and
2. Review a CA permit decision at the request of the applicant.

On April 5, 2024, the Province posted a proposal for a regulation on the Environmental Registry of Ontario (ERO No. 019-8320) to specify the circumstances under which these Ministerial powers can be used. If the regulation is approved, guidance would be made publicly available on the criteria and processes outlined in the regulation.

Summary of Proposal (ERO No.: 019-8320)

Permits issued by the Minister

Under section 28.1.1 of the CA Act, the Minister has powers to:

- direct a CA not to issue a permit to a specific individual for a specified activity;
- direct a CA not to issue a permit for a certain type or class of activity;
- make an order before or after a CA permit application has been submitted (even if CA decision is pending);
- issue a permit in place of a CA for any activity if the same s.28.1 criteria or 'tests' concerning natural hazards and public safety considered by CAs are satisfied; and
- refuse a permit or issue a permit subject to such conditions as the Minister determines are appropriate.

Notice of any Ministerial order must be provided to affected CAs and any person who applied for the permit in question prior to the order, and must be posted on the Environmental Registry of Ontario (ERO) within thirty (30) days.

The Province is proposing a regulation that would specify the circumstances under which the Minister may issue an order to prevent a CA from making a permitting decision and make a permitting decision in place of a CA. Proposed additional requirements that would be set out in regulation include:

- The Minister may make an order to prevent a CA 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 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; and
 - Mixed use developments.
- 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 (e.g., development of provincial interest; timing/urgency; permitting process to date, if applicable; other barriers) and why it is preferable to the standard process in the CA Act.
 - Indication of whether the local municipality has endorsed the project and the request for Minister's involvement (e.g., by municipal letter or resolution).
 - Status of other required project approvals, including the extent of any engagement with the CA in the permitting process that the applicant has had to date.

Permits reviewed by the Minister

Under section 28.1.2 of the CA Act, applicants may request reviews of CA permits, including:

- request the Minister's review of the CA's decision where a permit was refused or of the permit conditions imposed within fifteen (15) days;
- appeal to the Ontario Land Tribunal (OLT) a CA's decision to refuse a permit or issue a permit subject to conditions (appeal provisions limited where a request for the Minister's review has been made) within ninety (90) days;
- After receiving a request, the Minister has thirty (30) days 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 ERO within thirty (30) days of a reply indicating the Minister intends to review the decision by the authority. If the Minister does not reply within thirty (30) days of the request, this is deemed to indicate that the Minister does not intend to conduct a review.
- After conducting a review, the Minister may confirm or vary the CA's decision or make any decision the Minister considers appropriate, including issuing the permit subject to conditions.
- The Minister is required to base the decision on the same criteria concerning natural hazards and public safety that are considered by CAs.

The Province is proposing a regulation that would specify the circumstances under which the Minister may undertake a review of a CA permitting decision. 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; and

- Mixed use developments.

Note: These 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*.

- The request submitted to the Minister for a review would include information on:
 - Overview of proposed development.
 - If the request relates 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 a CA'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 (e.g., development of Provincial interest, timing/urgency; permitting process to date; other barriers) and preferable to alternative mechanisms in the CA Act.
 - Indication of whether the local municipality has endorsed the project and/or the request for the Minister's involvement (e.g., by municipal letter or resolution).
 - Status of other required project approvals.

The ERO posting states that, by clearly communicating the circumstances under which the Minister would consider whether to issue an order or to review a CA permitting decision, the regulation would ensure that development proponents pursue the appropriate permitting channel and that 'efficiently navigating the permitting process is expected to help save proponents time and resources'.

Implications of Proposal (ERO No.: 019-8320)

While many of the legislative and regulatory changes recently released by the Province are positive and have already been implemented by Conservation Halton (CH) (e.g., permit review turnaround standards, permit pre-consultations), the proposed regulation introduced through ERO No.: 019-8320 could result in unintended consequences if the scope and process is not clarified. In particular, the proposed circumstances under which the Minister may issue an order to prevent a CA from making a permitting decision and decide in place of a CA is concerning as it covers a broad range of development activities and there is limited detail about how the Ministerial process would streamline a CA's process to save proponents time and resources.

Some of the key implications of the proposal include:

1) Decision-making could become political rather than technical and could result in an increased risk to life and property.

- If the Minister issues an order to take over and decide on a permit application, it is unclear how the application would be evaluated, despite the requirement for the Minister to base their decision on the same criteria concerning natural hazards and public safety that are considered by CAs. Decisions need to be made with regard for residents in upstream or downstream municipalities, to avoid precedent-setting decisions, cumulative impacts, risk to public safety, and future management challenges. The ERO proposal does not detail what level of technical study may be required to inform the Minister's decision.

- CAs undertake non-partisan, transparent, and technically sound decision-making based on the best available information (e.g., flood hazard modelling/mapping) and local knowledge (e.g., understanding of local conditions and local planning context). The proposal would allow proponents to bypass the technical CA permitting process and the permitting process risks losing transparency and may become politicized.
- The Minister and Ministry of Natural Resources and Forestry (MNRF) may not have the capacity or expertise (i.e., water resources engineering and environmental planning expertise) to review permit applications under the CA Act and may need to hire additional staff or consultants. The Province would be responsible for absorbing any associated costs (cost to taxpayer) or would pass costs along to development proponents. The cost of hiring new staff and/or consultants is substantially higher than it is for CAs to do this work.
- If the Minister makes a decision on permitting matters, the MNRF would also be responsible for undertaking compliance and inspections, as well as liability for development in hazards.
- Some of the development activities listed as being of Provincial interest (e.g., community services - health and long-term care) are also defined as “Institutional use” in the Provincial Policy Statement (PPS) and are not permitted in hazard lands. If the Minister permits these types of development activities, vulnerable populations or sensitive uses could inadvertently be located in hazard lands, posing an increased risk to life and property.

2) Local decision-making could be circumvented.

- If the Minister takes over decision-making on certain permitting matters, decisions could be made without regard for local conditions, watershed context, or CA Board-approved regulatory policies. Without the technical expertise and local knowledge of CAs, or in the absence of a complete, technically sound permit submission for a development proposal, decisions may lack consistency with CA Board-approved policies and may result in precedent-setting decisions, cumulative impacts, risk to public safety and property damage, and lead to future management challenges.
- If the Minister makes a decision on a permit application before municipal planning approvals are granted, a municipality could be put in a difficult position if they do not support the works as approved by the Minister.
- CAs are required to maintain regulatory mapping for their jurisdiction, and many CAs do this by regularly updating hazard models and mapping based on information received from proponents through the permitting process. If the Minister makes a decision on permitting matters, it would be challenging for CAs to maintain regulatory mapping and to make decisions in the future using the most up-to-date information.

3) More confusion and time delays could be introduced into the development approval process.

- The CA permitting and municipal planning process changes introduced by the Province over the past few years have led to a great deal of confusion across the planning and development industry. It is also making the Province’s goals and objectives for delivering critically needed housing more challenging.
- With a lack of permit review and process expertise and experience, delays and inconsistent decision-making are possible if the Minister takes over select permit decision-making. The ERO proposal is unclear about how Ministerial decision-making will be faster or more efficient than CH’s permit approval process.
 - In the past ten (10) years, only two (2) permit applications have been denied by CH. These applications were for substantial expansions within the Regional Storm

floodplain. In one (1) of these cases, the applicant worked with CH to revise and resubmit their application to meet all regulatory requirements and was ultimately granted a permit. This demonstrates CH's willingness to work with applicants to find solutions.

- Over the past few years, CH has, on average, issued 94% of minor permits and 98% of major permits within thirty (30) days and ninety (90) days respectively. CH's permit review processes are transparent, fair, and predictable. CH has openly published service standards for years and regularly meets with developer groups and municipalities to ensure fees, process, and service standards are transparent and consistent.

Key Recommendations for the Province

To avoid the implications identified above, CH recommends that the proposed circumstances under which Ministerial powers are advanced be clarified and modified. More specifically, CH recommends that the Province:

- i. Pause advancing this regulation and engage with CAs to identify modifications that could be made to the proposal to ensure a streamlined, effective, and transparent decision-making process. CH staff would be pleased to participate in these discussions.
- ii. Consider other solutions that would support Provincial goals and solve the challenges that CAs and municipalities face that can lead to delays in the development approval process. For example, there are competing Provincial objectives and policies related to growth and development and natural hazards. Provincial policy generally directs development away from hazardous lands (Section 3 of the PPS), but it also directs municipalities to plan for development in Strategic Growth Areas to accommodate significant population and employment growth. Updated Provincial technical and policy guidance is needed to support municipal and CA decision-making in this regard. CH would be pleased to meet with the Province along with its municipal partners to identify solutions to address these challenges.

Conclusion

CH supports the Province and municipalities in meeting housing goals through timely and efficient permit reviews, and by carrying out mandatory responsibilities related to managing risks related to natural hazards, including preventing or mitigating those risks.

The proposal for a regulation to specify the circumstances under which Ministerial powers can be used, as currently presented on the Environmental Registry of Ontario (ERO No. 019-8320), raises numerous questions and may result in unintended consequences, such as risks to life and property, time delays, and confusion. Further details and clarification regarding the Minister's scope and process for considering development proposals is recommended in consultation with CAs.

Staff recommends that the CH Board endorses the comments and recommendations outlined in this report and that staff be directed to send this report to the Province as CH's submission on Environmental Registry of Ontario No. 019-8320 "Regulation detailing new Minister's Permit and Review Powers under the *Conservation Authorities Act*".

Impact on Strategic Priorities

This report supports the Momentum priority of "Natural Hazards and Water".

Financial Impact

There is no financial impact to this report.

Signed & respectfully submitted:



Kellie McCormack
Director, Planning & Regulations

Approved for circulation:



Hassaan Basit
President & CEO/Secretary-Treasurer

FOR QUESTIONS ON CONTENT:

Kellie McCormack, Director, Planning & Regulations
kmccormack@hrca.on.ca, 905-336-1158 x 2228