

# Halton Area Planning Partnership (HAPP)

## Proposed Amendments to the Conservation Authorities Act and Regulations for Development Permits

### Joint Submission

May 10, 2019



## Introduction

The Halton Area Planning Partnership (HAPP) is comprised of Halton Region, its local municipalities (City of Burlington, Town of Halton Hills, Town of Milton, Town of Oakville) and the following Conservation Authorities (CA) : Conservation Halton, Credit Valley Conservation and the Grand River Conservation Authority). This submission represents HAPP's response to the proposed legislative amendments to the *Conservation Authorities Act* (CA Act) and a proposal for a new development permit regulation under Section 28 of the CAA.

The Halton Area Planning Partnership welcomes this opportunity to express its collective voice by responding to the above noted ERO postings. HAPP's response will be sent to the Ministry of Environment, Conservation and Parks and the Ministry of Natural Resources and Forestry and will include:

1. This letter, which contains general comments regarding the proposed amendments to the CA Act and the new development permit regulation;
2. Specific comments to the proposed CA Act amendments (ERO Posting #013-5018 - Modernizing conservation authorities operations -Conservation Authorities Act (CA Act) Appendix 1; and
3. Specific comments to the new CA development permit regulation (ERO Posting #013-4992 - Focusing conservation authority development permits on the protection of people and property) in Appendix 2.

In the spring of 2019, the Province will also develop and consult on a suite of regulatory and policy proposals to support the proposed amendments to and proclamation of un-proclaimed provisions of the Conservation Authorities Act.

## Background

The CA Act Review was launched by the Ministry of Natural Resources and Forestry (MNRF) on July 20, 2015 and sought feedback on CA governance, funding mechanisms, roles and responsibilities.

HAPP reviewed the proposed amendments, *Bill 139 (Schedule 4): proposed amendments Conservation Authorities Act* and prepared a joint submission dated July 28, 2017 from Halton Region and its local municipalities (City of Burlington, Town of Halton Hills, Town of Milton, and Town of Oakville). The HAPP submission highlighted concerns on the framework to modernize the *Conservation Authorities Act* on the basis that it lacked significant detail regarding implementation and provincial funding levels to sustain provincially mandated programs and services. At the time, HAPP members did include Conservation Authorities in Halton and each agency had submitted comments directly to the Province on the proposed amendments.

On April 5, 2019, the Province posted two notices on the Environmental Registry of Ontario (ERO) in support of the Made-in-Ontario Environment Plan:

- ERO Posting #013-5018 - Modernizing conservation authority operations – *Conservation Authorities Act* (CA Act)
- ERO Posting #013-4992 - Focusing conservation authority development permits on the protection of people and property

The proposed amendments to the CA Act intend to help conservation authorities focus and deliver on their core mandate, and improve governance. The proposed regulation is intended to create a consistent regulatory approach for the review and issuance of conservation authority permits by all conservation authorities. The proposal could support more streamlined approvals while ensuring that public safety is not compromised by natural hazards.

## Key Points of HAPP's Response

### General Comments

Please consider a 60 day comment period so that municipal and conservation authority staff have the opportunity to report to, or brief Councils and CA Boards of Directors on proposed changes and allow an opportunity for agencies to provide responses to the province.

While HAPP is generally supportive of efforts to better streamline service delivery, HAPP is constrained in its ability to provide comprehensive comments due to the absence of the associated regulations, policies, and/or standards providing specific implementation details. The proposed legislative amendments and regulations should be released for public review and comment as soon as possible.

The CA Act was intended to function as a generic framework to guide all CAs in the development of regulations specific to the unique geography of their jurisdiction. HAPP requests additional details regarding implementation to better understand how the consolidated regulation will ensure consistency while still allowing for flexibility based on local risk factors. Each watershed is different and the policy documents need to be able to reflect that.

### ERO posting # 013-5018 - Modernizing conservation authority operations – *Conservation Authorities Act*

#### **1. Define the core mandatory programs**

HAPP supports the Province's intent to clearly define core mandatory programs and services provided by the conservation authorities. Further, to clarify the CAs' roles and responsibilities in land development/land use planning specifically related to natural heritage and natural hazard protection and management.

The Halton Municipalities of HAPP support our previous position as contained in the July 28, 2017 response. Our Conservation Authority partners differ from this position and have submitted their own response to the Province on the proposed changes to define the core mandatory programs and services to be provided.

#### **2. Sustainable Funding CA Programs and Services**

HAPP supports the increase in transparency and clarity in how CAs levy municipalities for mandatory and non-mandatory programs. A clear definition of core mandatory programs versus non-mandatory programs will be needed to ensure transparency can be provided by the CAs. The Province must also ensure that the appropriate Provincial funding levels are in place to sustain any current or future provincially mandated CA programs and services.

#### **3. Agreements for the Delivery of non-mandatory programs and services**

HAPP supports this proposal and transition period as Halton Region, local municipalities and CAs have updated the Memoranda of Agreement (MOAs) for the Region and are working towards service agreements for non-mandatory programs and services.

Additional clarification is required regarding the process for agencies to enter into agreements for the delivery of non-mandatory programs. Also, needs to be determined how these agreements would impact the current municipal levy approval and apportionment processes.

#### **4. Governance and Accountability**

HAPP supports the legislation that would enable the Minister to appoint an investigator to investigate or undertake an audit and report on a CA. Furthermore, HAPP supports the legislation which would clarify that the duty of conservation authority board members is to act in the best interest of the conservation authority.

#### **5. Proclamations of un-proclaimed provisions of the CA Act**

HAPP supports the proposal to proclaim the un-proclaimed provisions of the Act that were addressed as part of the previous *CA Act* review once recommendations from HAPP's previous submission (see Appendix 3) are addressed.

The CA's (Conservation Halton, Credit Valley Conservation and the Grand River Conservation Authority) had provided their own agency comments on *Bill 139 (Schedule 4): proposed amendments Conservation Authorities Act*.

ERO posting # 013-4992 - Focusing conservation authority development permits on the protection of people and property

#### **1. CA Regulations**

HAPP supports the proposed regulation would consolidate and harmonize the existing 36 individual CA approved regulations into one approved regulation to ensure consistent in requirements across all conservation authorities while still allowing for local flexibility based on differences in risks posed by flooding and other natural hazards.

#### **2. Define Key Regulatory Terms**

HAPP supports the proposal to update the key regulatory and undefined terms to better align with other provincial policy and minimize variation across the province. In order to achieve a more consistent interpretation of these terms and to assist in future legal matters that may challenge these definitions, the province should consider providing supporting documentation in the future (e.g., fact sheets or implementation guidelines), which would also support transparency.

#### **3. Low-risk Development Activities**

HAPP supports the inclusion of a provision that would enable CAs to further exempt low-risk development activities in limited parts of natural hazard areas where there is sufficient technical information and mapping available. This proposal would support faster, more predictable and less costly approvals for municipal governments and taxpayers.

#### **4. Consultation and Monitoring**

HAPP supports any efforts or initiatives that increase public and indigenous community engagement or participation in CA-related programs and services, including notifying the public of changes to mapped regulated areas. However, where a municipality is undertaking a land use planning approval such as a secondary plan, notification of changes to mapped CA-regulated areas will be through the municipal consultation process. HAPP recommends that notification for land use planning approvals remain with the municipalities to avoid a duplication of public processes.

HAPP also supports the proposal to require conservation authorities to establish, monitor and report on service delivery standards, including requirements and timelines for the determination of complete applications, and timelines for permit decisions.

## Conclusion

Thank you for providing the Region, our local municipal partners and Conservation Authorities the opportunity to comment on the proposed amendments to the *CA Act* and new development permit regulation.

Respectfully submitted,

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Chief Planning Official  
**Halton Region**

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**Credit Valley Conservation**

**HAPP Comments re: ERO Posting #013-5018,  
Modernizing conservation authority operations – Conservation Authorities Act**

#	Proposed Change	HAPP Comments
Proposed Amendments to the Conservation Authorities Act		
1.	Clearly define the core mandatory programs and services provided by conservation authorities to be: natural hazard protection and management; conservation and management of conservation authority lands; drinking water source protection (as prescribed under the Clean Water Act); and protection of the Lake Simcoe watershed (as prescribed under the Lake Simcoe Protection Act)	<p>HAPP supports the Province's intent to clearly define core mandatory programs and services provided by the conservation authorities. Further, to clarify the CAs' roles and responsibilities in land development/land use planning, specifically related to natural heritage and natural hazard protection and management.</p> <p>The Halton Region Municipalities of HAPP support our previous position as contained in the July 28, 2017 response.</p> <p>HAPP believes that CAs play a key role in protecting lives and property from natural hazards and education and stewardship. HAPP also supports the CA management of natural hazards on a watershed basis.</p> <p>Our Conservation Authority partners differ from this position and have submitted their own response to the Province on the proposed changes to define the core mandatory programs and services to be provided.</p> <p>Halton Region and its local municipalities (City of Burlington, Town of Halton Hills, Town of Milton, Town of Oakville) recognizes that <u>natural hazard</u> protection has a direct link to watershed planning and should be identified as a "core service" for CAs. However, with respect to watershed planning for the management of <u>natural heritage resources</u>, service agreements between the CAs and municipalities should define the CAs' roles and responsibilities (i.e., not a core service).</p> <p>There is also a concern that by defining the core mandatory programs and services provided by CAs to include drinking water source protection (as prescribed under the Clean Water Act), the funding responsibilities for this program could be downloaded to</p>

#	Proposed Change	HAPP Comments
		municipalities. HAPP recommends that the Province commit to sustained funding of provincially delegated programs and services as the costs should not be borne by municipal governments and taxpayers.
2.	Increase transparency in how conservation authorities levy municipalities for mandatory and non-mandatory programs and services. Update the Conservation Authorities Act, an Act introduced in 1946, to conform with modern transparency standards by ensuring that municipalities and conservation authorities review levies for non-core programs after a certain period of time (e.g., 4 to 8 years)	<p>HAPP supports the increase in transparency and clarity in how CAs levy municipalities for mandatory and non-mandatory programs.</p> <p>A clear definition of core mandatory programs versus non-mandatory programs, as well as criteria to clearly indicate whether a program qualifies as “core” or “mandatory”, will be needed to ensure transparency can be provided by the CAs. Furthermore, prior to delegating any further mandatory programs or services to CAs, the Province must also ensure that the appropriate Provincial funding levels are in place to sustain any current or future provincially mandated CA programs and services.</p>
3.	Establish a transition period (e.g., 18 to 24 months) and process for conservation authorities and municipalities to enter into agreements for the delivery of non-mandatory programs and services and meet these transparency standards	<p>HAPP supports this proposal and transition period as Halton Region, local municipalities and CAs have updated the Memoranda of Agreement (MOAs) for the Region and are working towards service agreements for non-mandatory programs and services.</p> <p>Additional clarification is required regarding the process for agencies to enter into agreements for the delivery of non-mandatory programs. Also, it needs to be determined how these agreements would impact the current municipal levy approval and apportionment processes.</p>
4.	Enable the Minister to appoint an investigator to investigate or undertake an audit and report on a conservation authority	<p>HAPP supports the legislation that would enable the Minister to appoint an investigator to investigate or undertake an audit and report on a CA.</p> <p>As per HAPP’s previous submission, HAPP recommends that the Province develop CA performance measures, and require CAs to report to the Minister, based on ‘results-based accountability’.</p>

#	Proposed Change	HAPP Comments
5.	Clarify that the duty of conservation authority board members is to act in the best interest of the conservation authority, similar to not-for-profit organizations	<p>HAPP supports legislation that would clarify that the duty of conservation authority board members is to act in the best interest of the conservation authority, similar to not-for-profit organizations.</p> <p>As per HAPP's previous submission, HAPP recommends that efforts be made to ensure that the best management mechanisms within the CA Act align with the best management practices of other public sector corporations. Furthermore, HAPP recommends that a new method for determining municipal representation on a CA Board be developed that is reflective of both population size and geographic coverage within the watershed.</p>
Proposed provisions of the Conservation Authorities Act to be proclaimed		
6.	<p>The province is proposing to proclaim un-proclaimed provisions of the Conservation Authorities Act related to:</p> <ul style="list-style-type: none"> <li>• fees for programs and services</li> <li>• transparency and accountability</li> <li>• approval of projects with provincial grants</li> <li>• recovery of capital costs and operating expenses from municipalities (municipal levies)</li> <li>• regulation of areas over which conservation authorities have jurisdiction (e.g., development permitting)</li> <li>• enforcement and</li> </ul>	<p>In general, HAPP supports the proposal to proclaim the un-proclaimed provisions of the Act that were addressed as part of the previous CA Act Review once recommendations from HAPP's previous response are addressed. HAPP's previous submission included comments from Halton Region and its local municipalities (City of Burlington, Town of Halton Hills, Town of Milton, Town of Oakville).</p> <p><u>The CAs' (Conservation Halton, Credit Valley Conservation and the Grand River Conservation Authority) had provided their own agency comments on Bill 139 (Schedule 4): proposed amendments Conservation Authorities Act.</u></p> <p>HAPP maintains that its recommendations made in response to Bill 139, Schedule 4 (Amendments to the CA Act), remain valid and need to be addressed prior to the proclamation of un-proclaimed provisions of the CA Act. The key recommendations from HAPP's earlier report are as follows: The key recommendations from HAPP's earlier report are as follows:</p> <p>Recommendations</p> <ul style="list-style-type: none"> <li>• 20 (1) – Objects – Section 20 (1) has been clarified, which is appreciated; however, it would be helpful to understand what is intended by "services".</li> <li>• 21.1 (1) – Programs and services – "Mandatory programs and services that are required by regulation." It is challenging to comment on the proposed changes without</li> </ul>



#	Proposed Change	HAPP Comments
	<p>offences</p> <ul style="list-style-type: none"> <li>• additional regulations</li> </ul>	<p>first seeing the regulation. “Such other programs and services as the authority may determine are advisable to further its objects.” Further clarity is required on the scope of these programs and services. Upper-tier and local municipalities should oversee and approve these programs and services to weigh their value to residents.</p> <ul style="list-style-type: none"> <li>• 21.1 (6) – Consultation – The inclusion of a section regarding consultation requirements related to the programs and services an authority provides is supported; However it is challenging to comment fully without first seeing the regulation.</li> <li>• 21.2 (10) – Notice of fee change – Similar to our comment on section 18 (2) Advisory Boards, clarity is needed regarding the intent of “as it considers appropriate” and also regarding oversight of the way in which an authority gives notice.</li> <li>• 25 (1-6) – Recovery of capital costs of CA projects by participating municipalities – As per HAPPs previous submission, the Province should commit to delivering long-term, sustainable funding of provincially delegated CA programs and services. The cost of downloaded programs and services should not be borne by municipal governments and their taxpayers. Recovery of project capital costs should also be shared with the Province. The legislation proposes regulations governing how CA capital costs are apportioned to municipalities. As the regulations that provide details about apportionment procedures are not yet released it is difficult for HAPP to comment on and support these legislative amendments.</li> <li>• 27(1) – Recovery of operating expenses – The legislation introduces new regulations, which are not yet released, governing annual CA operating costs and the apportionment of these costs to participating municipalities. As noted, the regulations that provide details about apportionment procedures are not yet released so it is difficult for HAPP to comment on and support these legislative amendments.</li> <li>• 28 (1) – Prohibited activities re: watercourses, wetlands, etc. – The clarification in 28 (1) regarding prohibited activities is recognized and appreciated. However, given that the rationale or intent behind the proposed legislative changes in Section 28 have not been provided, as well as the lack of details about future regulations and/or policies, it is not clear how the exceptions outlined in Subsections 28 (2)-(4) will be implemented. Therefore, it is challenging for HAPP to comment on these changes.</li> <li>• 28 (5) Definitions – It is not clear why definitions for “development activity”, “hazardous</li> </ul>

#	Proposed Change	HAPP Comments
		<p>land", "watercourse" and "wetland" have been removed from the legislation and will instead be defined by regulation. As noted in HAPP's August, 2016 joint submission on Stage 2 of the Conservation Authority Act Review, we maintain that "conservation of land" should also be a defined term to enable more consistent and transparent CA policy interpretation and decision making. As such, HAPP strongly recommends that the "conservation of land" be a defined term and that regulatory details about other prescribed definitions be released for public review to understand the implications of these changes.</p> <ul style="list-style-type: none"> <li>• 28.1 (1) – Application for permit – "...and include such information as is required by regulation." Again, it is challenging to comment on the proposed changes without first seeing the regulation. HAPP strongly recommends that these regulatory details be released immediately so that municipalities and the public have an opportunity to understand the significance and implications of these proposed changes.</li> <li>• 28.1 (4) – Power to refuse, etc. – It is appreciated that a section has been added to clarify when an authority may refuse or attach conditions to a permit. As stated above, HAPP recommends that the legislation be amended to define "conservation of land".</li> <li>• 28.3 (5) – Power – Section 28 (14) of the current CA Act requires that, after a hearing, the authority must provide written reasons for the decision. This section has been repealed in the proposed Bill. HAPP recommends that this requirement be retained in the legislation.</li> </ul>

**HAPP Comments re: ERO Posting #013-4992,  
Focusing conservation authority development permits on the protection of people and property**

	Proposed Change	HAPP Comments
1.	Update definitions for key regulatory terms to better align with other provincial policy, including: “wetland”, “watercourse” and “pollution”	<p>HAPP supports the proposal to update the definitions for these terms to better align with other provincial policy and minimize variation across the province. In order to achieve a more consistent interpretation of these terms and to assist in future legal matters that may challenge these definitions, the province should consider providing supporting documentation in the future (e.g., fact sheets or implementation guidelines).</p> <p>Municipalities and CAs should have the opportunity to comment on proposed updated and new definitions, given the implications on local zoning and development control.</p>
2.	Defining undefined terms including: “interference” and “conservation of land” as consistent with the natural hazard management intent of the regulation	<p>HAPP supports the proposal to define these terms. As per HAPP’s previous submission, we maintain that “conservation of land” should be a defined term to enable more consistent and transparent CA policy interpretation and decision-making from a natural hazard perspective across the Province.</p> <p>Municipalities and CAs should have the opportunity to comment on proposed updated and new definitions, given the implications on local zoning and development control.</p>
3.	Reduce regulatory restrictions between 30m and 120m of a wetland and where a hydrological connection has been severed	<p>HAPP supports the reduction of regulatory restrictions between 30m and 120m from a wetland in some instances where the project would not have a substantial effect on the hydrologic function of the wetland. Examples include: sheds, barns, garages, replacement septic systems, small additions to single family dwellings, etc.</p> <p>Clarification is requested regarding what is meant by “where a hydrological connection has been severed”. HAPP is supportive</p>

	Proposed Change	HAPP Comments
		of the interpretations of this statement provided by Conservation Halton and Grand River Conservation Authority in their agency responses to the ERO posting
4.	Exempt low-risk development activities from requiring a permit, including certain alterations and repairs to existing municipal drains subject to the Drainage Act provided they are undertaken in accordance with the Drainage Act and Conservation Authorities Act Protocol	HAPP supports the inclusion of a provision that would enable the exemption of some low-risk activities from requiring a CA permit.
5.	Allow conservation authorities to further exempt low-risk development activities from requiring a permit provided in accordance with conservation authority policies	<p>HAPP supports the inclusion of a provision that would enable CAs to further exempt low-risk development activities in limited parts of natural hazard areas where there is sufficient technical information and mapping available. This proposal would support faster, more predictable and less costly approvals for municipal governments and taxpayers.</p> <p>In HAPP's previous submission, it was recommended that the Province develop provincial standards or a risk management framework to aid CAs in the evolution of permit applications, and to consider permit exemptions for minor or common standard works.</p> <p>The Province should provide a clear and definitive exemption list, including evaluation criteria for low-risk development activities. Consideration should also be given to the requirements that will need to be in place for the implementation of these provisions, including provincially sustainable funding for up-to-date natural hazard mapping. The cost of downloaded programs and services should not be borne by municipal governments and their taxpayers.</p>

	Proposed Change	HAPP Comments
6.	Require conservation authorities to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions	HAPP supports this proposal to require CAs to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions. We note that CAs within Halton Region already have these policies publicly available on their websites.
7.	Require conservation authorities to notify the public of changes to mapped regulated areas such as floodplains or wetland boundaries	<p>HAPP supports any efforts or initiatives that increase public and indigenous community engagement or participation in CA-related programs and services, including notifying the public of changes to mapped regulated areas.</p> <p>The Ministry of Natural Resources and Forestry is responsible for determining the boundaries of Provincially Significant Wetlands in Ontario that are regulated by CAs. The Province does not currently notify the public of changes to wetland mapping, and it is recommended that the Province take on this responsibility.</p> <p>Where a municipality is undertaking a land use planning approval such as a secondary plan, notification of changes to mapped CA-regulated areas will be through the municipal consultation process. HAPP recommends that notification for land use planning approvals remain with the municipalities to avoid a duplication of public processes.</p> <p>Guidance on acceptable public notification would be helpful to outline options available to CAs. HAPP will have additional comments once the proposed implementation details are provided. Currently, the public is consulted on major changes to CA mapping within Halton Region through their website.</p>
8.	Require conservation authorities to establish, monitor and report on service delivery standards including requirements and timelines for the determination of	HAPP supports the proposal to require conservation authorities to establish, monitor and report on service delivery standards, including requirements and timelines for the determination of complete applications and timelines for permit decisions. HAPP

	Proposed Change	HAPP Comments
	complete applications and timelines for permit decisions	recommends that the Province consider streamlining planning and permitting requirements by establishing evaluation criteria to identify standard requirements, the review timelines, notice provisions and reporting measures to the Province.

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