



OFFICE OF THE MAYOR
CITY OF HAMILTON

September 1, 2016

Water Resources Section c/o Alex McLeod
Natural Resources Conservation Policy Branch
Ministry of Natural Resources & Forestry
300 Water Street, 6th Floor South
Peterborough, Ontario
K9J 3C7

Dear Mr. McLeod,

Re: **Review of *Conservation Authorities Act***

On behalf of the City of Hamilton ("Hamilton"), I am pleased to forward the within submission on how to improve the *Conservation Authorities Act* and regulations. This is in addition to the submissions made by Hamilton by letters dated September 23, 2015 and October 16, 2015.

My comments below are made in response to the five priorities identified by the Ministry of Natural Resources and Forestry (MNRF) in the consultation document entitled "Conserving Our Future: Proposed Priorities for Renewal", issued May 2016.

PRIORITY #1: Strengthening oversight and accountability in decision making

Independence

The independent and watershed based governance model of conservation authorities is generally supported. With respect to source water protection activities, such model is considered essential.

However, municipalities should be entitled to more decision-making powers (as they relate to scope of projects, risk management, priorities and funding) when conservation authorities undertake projects within a municipality's boundaries. Also, there is a need for greater consistency in governance, strategic direction and service delivery, which could be achieved through greater oversight by the Province.

Representation on the Board

Pursuant to subsections 14(1), 14(5) and 2(2) of the Act, the number of representatives that each municipality can appoint to a conservation authority board is based on the population of that municipality within the watershed. However, section 4 of the Act suggests that a two-tier municipality is entitled to even more seats, by permitting each lower tier municipality to appoint a representative, regardless of its population. This has the effect of giving a two-tier municipality representation which is far greater and disproportionate to its aggregate population.

A municipality like Hamilton, which is single tier, is in effect penalized in comparison to its neighbouring two-tier municipalities. To avoid such disparity and inequity, where there is a two-tier municipality, the population of the upper tier municipality should determine the total number of representatives to which it and its lower tier municipalities are entitled.

Membership and Qualifications

Municipalities may have technical expertise which conservation authorities lack for certain projects. As a result, there should be some formal ability for municipalities to provide technical, administrative and leadership assistance to conservation authority initiatives. To this end, representatives appointed to the conservation authority board could include senior administrators from the participating municipalities.

Relationship with MNRF

The relationship between conservation authorities and MNRF has clearly changed since the 1990s. MNRF provides the minimum standard for operational and administrative procedures for conservation authority boards, which the boards can in turn further amend. Such procedures and other applicable rules and guidelines should be reviewed and revised by the Province, in order to synchronize them.

Further, the Province currently has limited opportunity to influence conservation authority activities on a day-to-day basis. Providing conservation authorities with sufficient autonomy and flexibility to address local needs is a positive thing; however, too much autonomy and flexibility has resulted in inconsistency in projects and practices. MNRF should play a role in providing a clear direction for conservation authorities across the province.

PRIORITY #2: Increasing clarity and consistency in roles and responsibilities, processes and requirements

Section 20 of the Act sets out the purpose of a conservation authority: "The objects of an authority are to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals."

These objects are intentionally broad, so that each conservation authority can tailor programs according to its unique needs. However, this can be challenging to a municipality such as Hamilton, whose territory is shared by four conservation authorities, which in turn can lead to inconsistency in strategic direction and service delivery.

There are other possible reasons for inconsistency in direction and conservation authority activities across jurisdictions. One reason may be the gradual erosion of Provincial oversight of conservation authorities, as the Province no longer appoints representatives to the boards and plays no role on project oversight except where there is MNRF funding. Another reason may be that conservation authorities enjoy different levels of funding and technical knowledge.

Possible solutions for correcting such inconsistencies include:

Increasing Provincial oversight of conservation authorities operations and activities;

Ensuring work as between conservation authorities, municipalities, the Province and other parties is performed by the party with the most technical knowledge, and ensuring funds are allocated accordingly;

Standardizing certain work, such as collecting and preparing technical data (e.g. collection of rainfall, stream flow, lake levels, snow courses) which all support a multitude of programs, and ensuring funds are consistently committed to support such work;

Updating certain documents such as:

MNR's natural hazard guideline from 2002, upon which conservation authorities provide review comments related to natural hazards, and

The Generic Regulations from 2006, established for regulating any development or activities in hazard lands.

PRIORITY #3: Improving collaboration and engagement among all parties involved in resource management

The MNR should improve collaboration and engagement in resource management by engaging in conversation among all relevant stakeholders in relation to the following goals/concerns, with the aim of finding environmentally and economically responsible policy solutions:

Maximization of efforts by conservation authorities to protect and increase the biodiversity of regionally rare native Ontario plants;

Creation of science-based policy to address the problem of artificial in-breeding within plant populations on conservation authority lands, due to such barriers as de facto bans on the planting of regionally rare native stock not derived from plants found on the authority's watershed, though within that authority's seed zone (Ontario Seed Zone Directive, 2010; based on Ontario Climate Model of climatic gradients within the province);

Clarification and implementation, province-wide, of best ecological practices related to the assisted migration of regionally rare native plants on conservation land and within the appropriate seed zone (or adjacent seed zone), but across conservation authority watershed boundaries;

Promotion of the planting of regionally rare native Ontario species in any appropriate habitat, including novel urban habitats, within a species' seed zone, particularly including conservation authority land where that species has a good chance of thriving, by specifically removing regulatory barriers that discourage opportunities for restoration;

Regular conversation among conservation authority officials, Royal Botanical Gardens officials, MNR officials, First Nations, scientists, citizens, and private sector stakeholders on biodiversity and sustainable development concerns related to the conservation authorities and to biodiversity generally;

Sharing of information related to best practices with regard to the above goals, among all relevant stakeholders; and

Formalization of rules and/or expectations with regard to best practices with regard to the above goals, among all relevant stakeholders.

PRIORITY #4: Modernizing funding mechanisms to support conservation authority operations

Apportionment of Maintenance Costs

A significant source of funding for conservation authorities is the maintenance and administration costs levy which is apportioned to participating municipalities pursuant to section 27 of the Act.

Subsection 27(6) of the Act contemplates that a conservation authority is entitled to apportion a levy for maintenance costs only against the rateable property in that part of the municipality which falls within the conservation authority's jurisdiction. However, Ontario Regulation 670/00 regarding Conservation Authority Levies has been erroneously interpreted by some parties to suggest that a municipality's total assessment may be used in the calculation of the levy.

For example, section 3 of Ontario Regulation 670/00 states that "[t]he modified current value assessment [of each participating municipality] is calculated by adding the current value assessments of all lands within a municipality all or part of which are within an authority's jurisdiction and by applying the following factors to the current value assessment of the land in the following property classes..." The lands which should be included in the assessment are only those which fall within the watershed; not all of the lands within the municipality. To interpret section 3 otherwise would be inconsistent with the Act.

Hamilton is unfortunately embroiled in a legal dispute with the Niagara Peninsula Conservation Authority (NPCA), where the NPCA is arguing that all of Hamilton's lands should be used to calculate the modified current value assessment, thereby vastly increasing Hamilton's levy apportionment. Hamilton falls within the jurisdiction of four conservation authorities, and using the NPCA's interpretation of the formula would result in a distorted increase to all of Hamilton's levy apportionments. This erroneous statutory interpretation causes a disproportionate and unfair financial burden to Hamilton. It is imperative that the Act and Regulation be clarified to state that only the rateable property within a conservation authority's jurisdiction may be used when calculating the levy apportionment.

To assist conservation authorities in accurately assessing the value of lands within their watershed, MPAC should code properties based on watershed. Failing this, conservation authorities should undertake a "Geo-referencing" study at regular intervals to determine the assessment apportionments in their watershed.

We acknowledge that Ontario Regulation 670/00 allows a conservation authority and its participating municipalities to agree on a levy apportionment which differs from the formula set out in the Regulation. The requirement of an agreement can be logistically impossible, where a conservation authority has 15 or more participating municipalities. Further, there may be no incentive for a participating municipality to consent to an agreement, where it derives an unjust enrichment from the formula. For example, where the application of the formula causes a municipality to receive a benefit which disproportionately exceeds the amount it must pay, then it may well choose to decline an agreement. Perhaps the solution here would be for the conservation authority board to have the authority to determine an apportionment which is fair and appropriate, having regard to specific factors like benefit derived; or alternatively, the Minister could have the authority to impose an apportionment on the parties which is fair and appropriate.

In the alternative, or additionally, the MNRF should consider general equity, and the unique geographic position of Hamilton specifically (situated between the Greater Toronto Area and rural Southwestern Ontario, and the Niagara Peninsula) in revising the relevant funding rules.

Administration Costs

In order to ensure administration costs (subsection 27(3)) of a conservation authority are properly controlled, the Act could specify a maximum percentage of all the maintenance and capital project costs up to which the administrative costs may be allowed.

"Benefit derived"

The Act states that conservation authorities must apportion capital project costs (subsection 26(2)) and maintenance costs (subsection 27(2)) to participating municipalities based on the "benefit derived" by each such municipality. It would be helpful if the Act and Ontario Regulation 670/00 set out factors for determining the "benefit derived" by each municipality, how it should affect the levy apportionment, and how such benefit can be verified, whether in the form of financial, environmental assessment or other reports. Such reporting would also improve the transparency in the work done by conservation authorities and how money is spent.

Provincial Funding

Recent years have seen the role of conservation authorities expand, and it is envisaged that their work will further increase due to, for example, the effects of climate change, rapid growth, and aging infrastructure. In contrast, funding from the Province has decreased and become more intermittent over the years, with a trend towards one-time, non-recurring, special projects funding.

For example, the administration of Source Protection Plans (SPPs) is mandated by the *Clean Water Act, 2006* and was delegated to conservation authorities. Funding for the program has been intermittent over the years with conservation authorities waiting for announcements on funding prior to carrying on significant projects for source protection committees (i.e. tier 3 water budgets). With the continuing potential for emerging threats to Ontario's aquifers and the potential impact of climate change on drinking water sources in Ontario (through either drought or flooding conditions), a stable, long term, provincial source of base funding to conservation authorities for source protection work would be desirable.

We hope to see greater and long term commitment of annual base funding from the Province. Further, we would like the Act to provide clarification and direction on how provincial funding is to be equitably shared among the conservation authority and its participating municipalities. To this end, the Act should clarify:

How Provincial grant funding is to be applied towards offsetting the levy for each supporting municipality;

How special purpose funding by the MNRF or any other ministry is to be factored into the levy calculations;

How the conservation authority may prioritize the request for special funding such that where the available funds are limited, that all supporting municipalities are treated fairly in terms of allocation of such funds to individual initiatives; and

Where the funds expended on a municipality's projects during the year are less than the funds levied, the balance would go into a reserve; the Act could specify that such reserves be maintained as segregated reserves to be used only for the purposes of that municipality; and the Act could clarify if the

contributing municipality has a voice in how such accumulated reserves should be applied in future years, specifically, to offset any levy for the subsequent years.

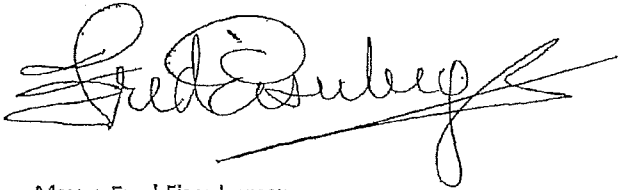
PRIORITY #5: Enhancing flexibility for the province to update the *Conservation Authorities Act* framework in the future

Conservation authorities, governments and other stakeholders must be prepared to respond to constantly evolving environmental conditions and challenges. One such issue has already been identified in Priority #3, regarding the protection of the biodiversity of regionally rare native Ontario plants.

When developing actions to enhance flexibility for the future, the MNRF should ensure that collaboration and engagement among all relevant stakeholders is embedded in the process, with a goal of finding environmentally and economically responsible policy solutions.

If you have any questions or wish to discuss this submission, please contact me by telephone or by e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Eisenberger". The signature is stylized with a large, looped "F" and "E", and a long horizontal stroke extending to the right.

Mayor Fred Eisenberger