

**[LETTERHEAD OF THE OFFICE OF THE MAYOR]**

**[Date]**

Ministry of the Environment, Conservation and Parks  
Great Lakes Office  
40 St. Clair Avenue West  
Floor 10  
Toronto, ON M4V 1M2

Attention: Carolyn O'Neill

**Via e-mail: [glo@ontario.ca](mailto:glo@ontario.ca)**

Dear Ms. O'Neill,

**Re: Proposed amendments to the *Conservation Authorities Act***

**ERO Notice Number 013-5018 – Modernizing conservation authority operations – Conservation Authorities Act**

On behalf of the City of Hamilton ("Hamilton"), I am pleased to forward the within submission on the proposed amendments to the *Conservation Authorities Act* (the "Act"), and ERO Notice Number 013-5018.

The Act, including un-proclaimed provisions of the Act which the Province is proposing to proclaim into force, contemplates that significant and substantive matters will be addressed by regulation, including but not limited to matters involving apportionment of capital costs and operating expenses; requirements regarding the appointment and qualifications of members of conservation authority boards; standards and requirements for conservation authority programs and services; and consultation that conservation authorities must carry out with respect to their programs and services.

Accordingly, I anticipate that further comprehensive amendments to the framework will come at a later date, in the form of regulatory change, and changes to policies, procedures and programs. Hamilton hopes there will be a further consultation period when specific amendments are introduced and will welcome the opportunity to provide additional input when such changes are proposed.

The references to section numbers below are to section numbers in the Act, including those section numbers which are currently un-proclaimed.

## **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, and section 4 should be amended accordingly.

## **Collaboration**

The Act provides a requirement for a conservation authority to establish advisory boards as may be required by regulation (section 18 – Advisory boards). It also sets out a requirement for a conservation authority to carry out such consultations with respect to the programs and services it provides as may be required by regulation (section 21.1 – Consultation).

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. The role of municipalities should be specified in the Act and/or regulations.

As well, Hamilton requests legislative or regulatory direction to require collaboration among all relevant stakeholders in relation to the following goals/concerns, with the aim of finding environmentally and economically responsible policy solutions:

- (i) maximization of efforts by conservation authorities to protect and increase the biodiversity of regionally rare native Ontario plants;
- (ii) 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);

- (iii) 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;
- (iv) 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;
- (v) regular conversation among conservation authority officials, Royal Botanical Gardens officials, provincial officials, First Nations, scientists, citizens, and private sector stakeholders on biodiversity and sustainable development concerns related to the conservation authorities and to biodiversity generally;
- (vi) sharing of information related to best practices with regard to the above goals, among all relevant stakeholders; and
- (vii) formalization of rules and/or expectations with regard to best practices with regard to the above goals, among all relevant stakeholders.

### **Oversight by the Province**

In earlier submissions, Hamilton requested greater consistency in governance, strategic direction and service delivery, which could be achieved through greater oversight by the Province. Hamilton is pleased that the 2017 amendments to the Act bestow a greater role upon the Province, including a right of the Minister to direct a conservation authority to make or amend a by-law (section 19.1 – By-laws) and to demand information from a conservation authority about its operations, including the programs and services it provides (section 23.1 – Information required by Minister).

Hamilton submits that the Minister should proactively use those powers to review, revise and synchronize the operational and administrative procedures, rules and guidelines for conservation authority boards.

Those powers should also be used 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. The Minister should play a role in providing a clear direction for conservation authorities across the province.

### **Membership and Qualifications**

The Act sets out that the appointment of members to a conservation authority shall be in accordance with such additional requirements regarding the composition of the authority

and the qualification of members as may be prescribed by regulation (section 14 – Requirements regarding composition of authority).

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. The role of municipalities should be specified in the Act and/or regulations.

### **Increasing Clarity and Consistency in Programs and Services**

In the Act, the objects of a conservation authority are broad, presumably so that each conservation authority can tailor programs according to its unique needs (section 20 – Objects). 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.

It is acknowledged that greater consistency may be achieved through increased oversight powers of the Province. However, Hamilton submits that other measures ought to be incorporated in the Act and/or regulations, such as:

- (i) 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;
- (ii) 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;
- (iii) updating certain documents such as:
  - MNRF'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.

### **Capital Costs and Operating Expenses**

Un-proclaimed provisions of the Act provide for the recovery and apportionment of capital costs and operating expenses by conservation authorities (sections 25 to and including 27.1). It appears that new regulations governing how capital costs and operating expenses are apportioned by a conservation authority among its participating municipalities will be proposed by the Province at a later date.

The Act applies to all of Ontario with a variety of complex situations, and thus it would be difficult to provide a definitive approach to levy distribution (and other issues) that would be fair to all conservation authorities and all municipalities in all situations. However, the Act should include broad guiding principles and clarify the intent of the law so that such principles may guide the application of the regulations. Such principles would also protect against unintended consequences of the mechanical application of the regulations.

In developing such guidelines in the Act, and in later developing the regulations, the Province should place great emphasis on equity, fairness and accountability.

For example, if the regulation contains alternate options for levy distribution, then the sequence and circumstances in which such options are to be considered should be defined. There should also be some clause in such regulations that would ensure that unreasonable conduct by any one party is not protected or rewarded; that is, all parties should have an incentive to be reasonable.

As well, a participating municipality paying the levy should have the right to request, at its discretion, information concerning administration expenditures and proposed expenditures on the watershed lands covered within its jurisdiction as well as the expected benefits of such expenditures. In reviewing the levy for a new budget year, the municipality may require the conservation authority to confirm the actual results in comparison to the expenditures and outcomes related to the previous year.

Hamilton submits that the calculation of a municipality's levy apportionment for operating expenses ought to be based on the rateable property in that part of the municipality which falls within the conservation authority's jurisdiction. This principle ought to be clearly set out in 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 regulations be clear 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.

Currently, 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 said 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. If the Act and/or its regulations will continue to permit "agreements", the solution may 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 Province 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.

Un-proclaimed provisions of the Act, once proclaimed, will replace the terms "administration costs" and "maintenance costs" with "operating expenses" (section 27). Items such as employee salaries and office costs are no longer identified as administration costs but are rather included in operating expenses. In order to ensure such costs are properly controlled, the Act or regulations could specify a maximum percentage of all the maintenance and capital costs up to which administration costs may be allowed.

Currently, the Act states that conservation authorities must apportion capital project costs and maintenance costs to participating municipalities based on the "benefit derived" by each such municipality. Un-proclaimed provisions of the Act, once proclaimed, will remove the term and concept of "benefit derived". To ensure that apportionment among municipalities remains fair and proportionate, the concept of "benefit derived" ought to remain in the Act as a guiding principle. Further, it would be helpful if the Act and/or regulations 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.

Similarly, capital costs ought to be apportioned in a manner which is commensurate with the benefit derived by the participating municipality.

In a document issued June 2017 entitled "Conserving Our Future: A Modernized *Conservation Authorities Act*", the Province stated that it will be "[w]orking with municipalities and conservation authorities to update the way in which costs are apportioned to participating municipalities – including determining the appropriate body

for hearing appeals of apportionment decisions". Hamilton hopes that the Province will provide for such consultation. Hamilton will be pleased to work with the parties in this regard and will be making further submissions at that time.

## **Planning**

Hamilton is concerned that with the Act and proposed amendments, the Province is placing the emphasis on "protecting people and property" and by default eliminating or deemphasizing the role of conservation authorities in protecting the natural environment. This will effectively result in a transfer of functions from conservation authorities to municipalities. This will have resource implications and result in more uncertainty in the planning process, as it appears the Province is proposing similar changes to the Provincial Policy Statement and Growth Plan under the banner of empowering local municipalities to have more flexibility. The unintended consequence will be more disagreements as to what is an acceptable buffer or protection zone.

## **Provincial Funding**

Provincial funding is not addressed in the Act. Rather, the Province previously indicated that it will be exploring options for updating provincial funding levels through future program changes.

As Hamilton previously submitted, the role of conservation authorities has expanded in recent years, 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.

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

- (i) how Provincial grant funding is to be applied towards offsetting the levy for each supporting municipality;
- (ii) how special purpose funding by the Province is to be factored into the levy calculations;
- (iii) 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
- (iv) 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.

### Source Protection Planning

An example of Hamilton's concerns about Provincial funding and allocation of responsibilities involves source protection planning. The Province is proposing to clearly define the core mandatory work of conservation authorities and include source protection planning as a core mandatory program. Further, it appears that the Province is downloading the responsibility for funding of the source protection program to municipalities: "increase transparency in how conservation authorities levy municipalities for mandatory and non-mandatory programs and services" (ERO Notice Number 013-5018).

Conservation authorities have been funded by the Province for the source protection program, as they play an important role in protecting municipal drinking water by working in collaboration with multiple stakeholders. Each of the conservation authorities in the Hamilton area have at least two full-time staff dedicated exclusively to this program. Their legislated responsibilities include:

- establish and administer Source Protection Committees (SPCs) for local decision making (the lead SPAs carry out this role)
- assist the SPCs in their powers and duties to be carried out under the *Clean Water Act*
- provide scientific, technical and administrative support and resources to the SPCs
- comply with an obligation to implement a significant threat policy or designated Great Lakes policy
- prepare annual progress reports for each source protection plan, submit to the SPC first and then to the Director, MECP
- propose and prepare updates to source protection plans and undertake necessary consultations leading to a submission to the MECP
- issue a notice to municipal residential drinking water system owners, upon receipt and review of necessary technical work, to support source protection planning for new or changing systems
- implement the work plan as per the Minister's order for review and updating of the source protection plan, assessment reports and explanatory document. Some of this work is legislated and some is not. The legislated work consists of updates



that are due to a change in the technical rules, regulation, tables of circumstances, etc. All other work required by the local stakeholders is considered non-legislated.

Some of the other non-legislated activities include:

- provide advice and program support to municipal staff to resolve issues with policy implementation
- keep municipal councils and councillors informed and aware of program progress and their obligations.
- maintain local source protection program, including issues management and participation in local, regional and provincial meetings to advance local programs
- support source protection committees in the preparation of updates to an assessment report and source protection plan under section 36 of the *Clean Water Act*
- monitor the provincial groundwater and surface water networks.

Municipalities will have the option to opt-out of the non-legislated activities; however, that will compromise the overall efficiency of the program. Further, at this time, municipalities do not necessarily have the staff and resources to assume those activities.

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

Sincerely,