

TO: Conservation Halton Board

FROM: Kellie McCormack, Director, Planning & Regulations

DATE: March 7, 2024

SUBJECT: Legislative and Regulatory Changes Affecting CH's Development Permitting (Effective April 1, 2024)

MEMO

Background

Over the past few years, the Province has introduced a series of legislative amendments through Bill 229 and Bill 23, as well as proposed regulatory and policy changes through consultations on various Environmental Registry postings. These changes are to support the Province's commitment to increase the supply of housing in Ontario and to have 1.5 million homes built over the next ten (10) years. Many of the introduced legislative changes affecting Conservation Authorities (CAs) have not been in force and effect and the associated implementing regulations had not been released.

On February 16, 2024, the Province released two new regulations (*O. Reg. 41/24: Prohibited Activities, Exemptions and Permits* and *O. Reg. 42/24: Mandatory Programs and Services*), under the *Conservation Authorities Act (CA Act)*. *O. Reg. 41/24* replaces Conservation Halton's (CH) existing individual "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulation (*O. Reg. 162/06*) and will be used by all CAs. *O. Reg. 42/24* amends *O. Reg. 686/21 (Mandatory Program & Service Regulation)* to require CAs to undertake annual permitting and regulatory compliance reporting. The enactment of these regulations coincides with the proclamation of associated sections within the *CA Act*.

Outlined below is a summary of the key legislative and regulatory changes that will come into effect on April 1, 2024, as well as an overview of the implications and implementation next steps for CH.

Summary of Key Legislative Changes

1) *Regulatory Tests (CA Act s.28.1)*

Changes the tests used by CAs in permit decisions whereby:

- the "conservation of land" and "pollution" tests have been removed;
- an "unstable soils and bedrock" test has been added; and
- a test related to ensuring a development or alteration activity does not "create conditions or circumstance 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" has been added.

The tests for the "control of flooding, erosion, and dynamic beaches" remain.

2) Exemptions (CA Act s.28 (4.1), 28.1(6), 28(2)(3)(4))

Enables CA permit exemptions for the following:

- prescribed activities which are part of a development authorized under the *Planning Act* (note: this requires an additional regulation to be in effect); and
- low-risk development activities set out in *O. Reg. 41/24*.

3) Minister Orders (CA Act s.28.1.1)

Requires CAs to issue permits for:

- projects subject to Community Infrastructure and Housing Accelerator orders (under s.34.1 of the *Planning Act*) and allowing the Minister to review and amend any conditions attached to those permits.

Enhances the Minister's powers to:

- direct a CA not to issue a permit;
- direct a CA or CAs not to issue a permit for a specified period of time;
- enable the Minister to issue a permit for any activity if s.28.1 "tests" are satisfied;
- make an order before or after a CA application has been submitted (even if CA decision is pending); and
- enable the Minister to issue permit with conditions as they determine appropriate.

4) Permit Appeal Process (CA Act s.28.1(8), 28.1(20), 28.1(22), 28.3(6))*

Establishes additional processes for applicants to:

- request a 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 a Minister's review has been made);
- appeal to the OLT for failure of a CA to make a decision on complete permit submission within ninety (90) days; and
- appeal to the OLT permits that have been cancelled following a CA hearing (within ninety (90) days)

*For section 28.1 permit applications (non-zoning order).

5) Permit Cancellations (CA Act s.28.3)

Moved the permit cancellation provisions to the Act rather than CA regulations.

6) Board Delegation (CA Act s.28.4)

Enables an Authority to delegate not only permit issuance to a person or body but also the:

- cancellation of permits; and

- issuance of sixty (60) month permits and permit extensions.

7) *Permit Application Fees (CA Act s. 21.2 (13 to 21))*

Establishes new provisions to allow for the reconsideration of permit application fees, including that:

- CAs have thirty (30) days to make a decision and applicants can appeal to the OLT for non-decision; and
- the OLT may dismiss an applicant's appeal, vary the amount, or order that no fee be charged, or a CA may be ordered by OLT to provide a refund.

8) *Enforcement & Offences (CA Act 30.1*, 30.2, 30.4, 30.5)*

Enhances CAs abilities to enforce the CA Act and regulations, including:

- Provisions for how Officers may enter private property without warrants and bring experts on site;
- New ability for Officers to make Stop Orders; and
- Updated offence provisions and penalties (maximum fines).

*Appointment of Officers moved from individual regulations to Section 30.1 of the CA Act

Summary of Key Regulatory Changes (O. Reg. 41/24 & O. Reg. 42/24)

1) *Single Regulation for all CAs*

O. Reg. 41/24: Prohibited Activities, Exemptions and Permits replaces Conservation Halton's existing individual "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulation (*Ontario Regulation 162/06*). This new Section 28 regulation applies to all CAs.

2) *Definitions*

Changes to definitions include:

- Moved definitions from CA Act to *O. Reg. 41/24*;
- Revised definitions for watercourse, wetland "other areas", and shoreline; and
- Removal of the definition for pollution.

3) *Prohibited Activities*

Changes to the activities and areas where a CA permit is required:

- Increased regulatory allowance in CH's minor urban valley systems from 7.5 metres from the hazard limit to fifteen (15) metres;
- Decreased regulated areas around wetlands (CAs now regulate thirty (30) metres from all wetlands rather than 120 metres from Provincially Significant Wetlands (PSW)/>two (2) hectare wetlands).

4) *Regulatory Mapping (O. Reg. 41/24 s.4)*

Enhances mapping provisions requiring a CA to:

- Make regulation mapping publicly available;
- Annually review and update maps; and
- Notify stakeholders of significant updates and promptly update maps.

5) *Exceptions (O. Reg. 41/24 s.5)*

Outlines CA permit exemptions for specified low-risk development activities, including small non-habitable structures not located in a watercourse or wetland.

6) *Pre-submission Consultation & Complete Applications (O. Reg. 41/24 s.6 & 7)*

Enhances permit process to require:

- CAs to engage in pre-submission consultations to confirm permit requirements; and
- Complete application requirements.

7) *Review Timelines and Service Standards (O. Reg. 41/24 (s.7) & Act (ss. 28.1(22))*

Prescribes service standards including:

- Twenty-one (21) days to deeming an application complete (or incomplete) after receiving an application and associated fee;
- Ninety (90) days to make a decision on a permit, once deemed complete; and
- Limits CAs from asking for additional studies after deemed complete (unless agreed to by applicant)

8) *Permit Conditions (O. Reg. 41/24 s.9)*

Requires that conditions can only be attached to a Permit if the conditions:

- Mitigate effects that control of flooding, erosion, dynamic beaches or unstable soil or bedrock;
- Prevent or mitigate effects on human health or safety or any damage or destruction of property in the event of a natural hazard; and
- Support administration or implementation of the permit, including reporting and notification, monitoring and compliance with the permit.

9) *Administrative Reviews (O. Reg. 41/24 s.8)*

New provisions to allow applicants to request a CA administrative review if:

- Notice for deeming application complete (or incomplete) has not been received;
- Applicant disagrees with the decision that an application is incomplete; or
- Applicant disagrees that the request for information, studies or plans is reasonable.

CAs must undertake administrative reviews within thirty (30) days of receiving request. There is no appeal mechanism if applicant disagrees with the outcome.

10) Policy and Procedures (O. Reg. 41/24 s.12)

New requirement for CAs to develop policy and procedure documents that include:

- Details of pre-consultation processes and complete application requirements;
- Procedures of the permit review process;
- Standard timelines for a CA to make a decision for permit once deemed complete; and
- A process for the periodic review of policies and procedures.

11) Reporting Requirements (O. Reg. 42/24)

O. Reg. 42/24 amends O. Reg. 686/21 (Mandatory Program & Service Regulation) to require CAs to undertake annual permitting and regulatory compliance reporting.

General Implications and Implementation Actions

Most of the legislative and regulatory changes described above were expected, as they were introduced by the Province over the past few years through a series of legislative amendments (i.e., Bill 23, Bill 229) and through consultations on various Environmental Registry postings. Many of the changes are positive and can easily be or have already been implemented by CH (e.g., prescribed review timelines and service standards, permit pre-consultation and complete permit application requirements, public engagement for large mapping updates, reporting requirements, enhanced enforcement abilities, some of the exemptions for low-risk development activities). However, some of the changes will have or have already resulted in unintended consequences, such as additional costs, time delays, confusion for stakeholders and the public, and/or environmental impacts (e.g., increased regulated area in some urban areas of CH's jurisdiction, provisions that would exempt development authorized under the *Planning Act* from requiring a permit under the CA Act in municipalities set out in regulation).

Outlined below is an overview of some of the actions that are critical for CH to successfully implement the CA Act-related changes:

- a) Mapping
 - Update CH's regulatory mapping with revised regulation limits.
- b) Administrative
 - Update regulatory and legislative references on all applications, forms, website, templates, technical guidelines, maps, etc.
- c) Notifications
 - Notify municipal staff, stakeholders, and the public on key legislative and regulatory changes, as well as new mapping requirements (e.g., revised regulation limits).
- d) Training
 - Attend Conservation Ontario and Ministry of Natural Resources and Forestry (MNR) training.
 - Hold internal training sessions for CH staff.

- e) Officer Designations and Staff Delegations
 - Re-appoint Officers under a new class designation.
 - Consider (re)delegating Authority powers to accommodate efficient timelines for permit review/issuance, administration reviews, permit cancellations, holding of hearings, etc.
- g) Policies
 - Adopt Interim Policies and Guidelines for the Administration and Implementation of *O. Reg. 41/24* until CH's existing regulatory policy document is updated.
- h) Procedures
 - Adopt Transitional Procedures and Guidelines for transitioning from *O. Reg. 162/06* to *O. Reg. 41/42* to ensure permits and new applications are subjected to the appropriate procedures and guidelines, depending on date of submission.
 - Develop procedures document.

The transition period from the release of *O. Reg. 41/24* to when the changes come into effect was limited to six (6) weeks. As such, staff has prioritized the items that need to be addressed immediately and those that will need to be completed over the coming months. Items e) to h) will require approval of the CH Board and will be presented to the Board via separate staff reports. Additional actions may also be necessary as staff continues to review and assess the changes. Notifications will be sent out to CH's municipal partners and key stakeholders in the next few days.