

REPORT TO: Conservation Halton Board

REPORT NO: # CHB 03 24 08

FROM: Kellie McCormack, Director, Planning & Regulations

DATE: April 18, 2024

SUBJECT: **Legislative and Regulatory Changes Affecting Conservation Halton’s Development Permitting and Interim Policies and Procedures**
CH File No.: AADM 436

Recommendation

THAT the Conservation Halton Board **approves the “Interim Policies and Guidelines for the Administration and Implementation of the *Conservation Authorities Act* and *Ontario Regulation 41/24*”;**

And

THAT the Conservation Halton Board **approves the “Interim Transitional Procedures and Guidelines (Transitioning from *Ontario Regulation 162/06* to *Ontario Regulation 41/24*)”;**

And

THAT the Conservation Halton Board **receives for information the staff report entitled “Legislative and Regulatory Changes Affecting Conservation Halton’s Development Permitting and Interim Policies and Procedures”.**

Executive Summary

On February 16, 2024, the Province released *Ontario Regulation 41/24: Prohibited Activities, Exemptions and Permits* (O. Reg. 41/24), 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 *Ontario Regulation 162/06* (O. Reg. 162/06) and will be used by all Conservation Authorities (CAs). This regulation came into effect on April 1, 2024, and coincides with the proclamation of associated sections within the CA Act.

The transition period from the release of O. Reg. 41/24 to when the changes came into effect was limited. As such, staff prioritized items that need to be addressed immediately (e.g., updates to mapping, application forms, notifications, interim policies) and those that will need to be completed over the coming months (e.g., procedures document). Select items require CH Board approval, including the following priorities:

1. The re-appointment of officers (CHB 03 24 09);

2. The delegation of permit approvals/cancellations and administrative reviews (CHB 03 24 10);
3. Interim Policies and Guidelines for the Administration and Implementation of O. Reg. 41/24 (Attachment 1); and
4. Interim Transitional Procedures and Guidelines for transitioning from O. Reg. 162/06 to O. Reg. 41/42 (Attachment 2).

Report

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 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 CA Act. O. Reg. 41/24 replaces CH's 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 came 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 circumstances 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 for a specified activity;
- direct a CA or CAs not to issue a permit for a type or class of activity 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) within ninety (90) days;
- 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 CA 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 onsite;
- 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 CH'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
- Removed 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 and select areas in Oakville and Milton 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) or wetlands greater than two (2) hectares).

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 with confirmation of requirements) after receiving an application and associated fee;
- Ninety (90) days to make a decision on a permit, once deemed complete; and
- Limiting CAs from requiring new studies, technical information, or plans after the application is 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 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).

Outlined below is an overview of some of the critical actions required for CH to successfully implement the 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 of 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 (MNRF) training.
 - Undertake 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 senior staff to ensure efficient timelines for permit review/issuance, administration reviews, and permit cancellations.
- f) Policies and Procedures
 - Adopt Interim Policies and Guidelines for the Administration and Implementation of O. Reg. 41/24 until CH's existing regulatory policy document is updated.
 - 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, until a new Procedures document is developed.

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 prioritized the items that needed to be addressed immediately and those that will need to be completed over the coming months. Additional actions may also be necessary as staff continues to review and assess the changes.

Items e) and f) above require CH Board approval. Two (2) staff reports related to the re-appointment of officers and delegation of permit approvals/cancellations and administrative reviews (Item e) can be found in staff reports CHB 03 24 09 and CHB 03 24 10.

As of April 1, 2024, CH must review and make decisions on applications for permits in accordance with Part VI of the CA Act and O. Reg. 41/24. This requires amendments to CH's Policy Document entitled "Conservation Halton Policies and Guidelines for the Administration of *Ontario Regulation 162/06* and Land Use Planning Policy Document April 27, 2006 (last amended, November 26, 2020)" to reflect this new framework. Staff is currently reviewing CH's existing Policy Document and anticipates bringing updated policies (conformity updates only) to the Board for approval at the end of Q2 2024.

Staff recommends that the CH Board approves the "Interim Policies and Guidelines for the Administration and Implementation of the *Conservation Authorities Act* and O. Reg. 41/24" (Attachment 1) until CH's existing Policy Document is updated. To mitigate the negative impacts associated with the increased regulatory allowance in CH's minor urban valley systems in Burlington and Oakville from 7.5 metres from the hazard limit to fifteen (15) metres, as well as in select areas in CH's major valley systems where the regulatory allowance increased to fifteen (15) metres (i.e., North Oakville East/West, Boyne, and Derry Green Secondary Plan Areas), staff has included a policy to allow all development activities within these areas that did not previously require a CH permit with only a Letter of Permission.

Transitional Procedures and Guidelines for transitioning from O. Reg. 162/06 to O. Reg. 41/42 are also needed to ensure permits and new applications are subjects to the appropriate procedures and guidelines. Staff recommends that the CH Board approve the "Interim Transitional Procedures and Guidelines (Transitioning from *Ontario Regulation 162/06* to *Ontario Regulation 41/24*)" (Attachment 2) until a new Procedures document is developed.

Where discrepancies exist between the text of the legislation or regulation and the information provided within CH's existing Policy Document and these Interim Policies and Procedures, the text of the legislation and regulation will prevail.


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:


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Approved for circulation:


Hassaan Basit
President & CEO/Secretary-Treasurer



FOR QUESTIONS ON CONTENT:

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Attachments:

Attachment 1: Interim Policy Guidelines for the Administration and Implementation of the *Conservation Authorities Act* and *Ontario Regulation 41/24* (Prohibited Activities, Exemptions and Permits)

Attachment 2: Interim Transitional Procedures and Guidelines (Transitioning from the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation to the NEW *Ontario Regulation 41/24*)



ATTACHMENT 1

Interim Policy and Guidelines for the Administration and Implementation of the *Conservation Authorities Act* and *Ontario Regulation 41/24 (Prohibited Activities, Exemptions and Permits)*

Effective Date: April 1, 2024

Summary

On April 1, 2024, *Ontario Regulation 41/24 (Prohibited Activities, Exemptions and Permits)* and Part VI of the *Conservation Authorities Act* came into effect. This regulation replaces Conservation Halton's previous "Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulation (*Ontario Regulation 162/06*).

The proclamation of the new legislative and regulatory framework necessitates updates to existing Conservation Authority policies and procedures, including Conservation Halton's "Policies and Guidelines for the Administration of *Ontario Regulation 162/06* and Land Use Planning Policy Document April 27, 2006 (last amended, November 26, 2020)".

Interim Policy Guidance

As of April 1, 2024, Conservation Halton will review and make decisions on applications for permits in accordance with Part VI of the *Conservation Authorities Act* and *Ontario Regulation 41/24*. Amendments to "Policies and Guidelines for the Administration of *Ontario Regulation 162/06* and Land Use Planning Policy Document April 27, 2006 (last amended, November 26, 2020)" will be forthcoming to reflect this new framework. Per section 12 of O. Reg. 41/24, Conservation Halton will consult with stakeholders and the public during the review and update process as the authority considers advisable. Where discrepancies exist between the text of the legislation or regulation and the information provided within Conservation Halton's existing Policy Document and these Interim Policy Guidelines, the text of the legislation and regulation will prevail.

Key variances from CH's policies/processes include, but are not limited to:

1. Assessing permit applications made under Section 28.1 of the *Conservation Authorities Act* to determine if the proposed works will affect the control of flooding, erosion, dynamic beaches, and unstable soil or bedrock.
2. Assessing applications to determine whether the proposed activity would create conditions or circumstances 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.
3. Attaching conditions to a permit only if the conditions (1) assist in preventing or mitigating any effects on the control of flooding, erosion, dynamic beaches, or unstable soil or bedrock; or (2) assist in preventing or mitigating any effects on human health or safety or any damage or destruction of property in the event of a natural hazard.
4. Reducing the regulated area surrounding provincially significant wetlands or wetlands greater than 2 hectares in size from 120 metres to 30 metres. The other areas in which development activities are prohibited are within 30 metres of all wetlands in Conservation Halton's area of jurisdiction.
5. Increasing the regulatory allowance in minor urban valley systems in Burlington and Oakville from 7.5 metres from the hazard limit to 15 metres, as well as in select areas in major valley



- systems to 15 metres (i.e., North Oakville East/West, Boyne, and Derry Green Secondary Plan Areas).
6. Permitting development activities between 7.5 metres and 15 metres of any hazard associated with a minor valley system and select locations within major valley systems identified in the approved Secondary Plans for the Boyne, Derry Green and North Oakville East and West Secondary Plan Areas, and will only require a Letter of Permission.
 7. Exceptions from CA permits for specific activities outlined in section 5 of O. Reg. 41/24, when carried out in accordance with the regulation.
 8. Updated definition of watercourse to a “defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs”.
 9. Updated complete application requirements (as outlined in section 7 of O. Reg. 41/24), including requirements for landowner authorization and payment of applicable fee.
 10. A new process for applicants to request an administrative review of an application (circumstances outlined in section 8 of O. Reg. 41/24).
 11. New requirement (as outlined in subsection 7(2) O. Reg. 41/24) to notify the applicant of whether an application is complete within 21 days and provide the applicant notice of a decision within 90 days following confirmation of a complete application (as outlined in 28.1(22) of the *Conservation Authorities Act*).
 12. A new process for pre-submission consultation (circumstances outlined in section 6 of O. Reg. 41/24).
 13. Enforcement procedures, appeals and hearing processes described in Parts VI and VII of the *Conservation Authorities Act*.



ATTACHMENT 2

Interim Transitional Procedures and Guidelines (Transitioning from *Ontario Regulation 162/06* to *Ontario Regulation 41/24*)

Effective Date: April 1, 2024

Background

The existing Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation provided each CA with the power to regulate development and activities in or adjacent to river or stream valleys, shorelines of the Great Lakes-St. Lawrence River system and inland lakes, watercourses, hazardous lands (e.g., unstable soil, bedrock, and slopes), wetlands and other areas around wetlands. Development taking place on these lands may require permission from the CA to confirm that the control of flooding, erosion, dynamic beaches, pollution, or the conservation of land are not affected.

On February 16, 2024, the Prohibited Activities, Exemptions and Permits under Conservation Authorities Act Regulation (*Ontario Regulation 41/24*) was approved by the Province under subsection 28(1) of the *Conservation Authorities Act* (CA Act). The administration of O. Reg. 41/24 is a Mandatory Program and Service of the Conservation Authorities as per Section 21.1.1 of the *Conservation Authorities Act* and as stipulated in O. Reg. 686/21: Mandatory Programs and Services. Under section 8 of O. Reg. 686/21, Conservation Authorities shall provide programs and services to ensure that the Authority carries out its duties, functions, and responsibilities to administer and enforce the provisions of Parts VI and VII of the Act and any regulations made under those Parts.

Purpose

The purpose of this document is to guide CH staff through the transition from O. Reg. 162/06: Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulations to the implementation of the new O. Reg. 41/24: Prohibited Activities, Exemptions and Permits Regulation.

1. Permit Applications

Applications Submitted Before April 1, 2024

Applications for permission to develop in a regulated area or to interfere with a wetland or alter a watercourse received prior to April 1, 2024, but not approved will be subject to the provisions of the CA Act and O. Reg. 41/24.

If the subject application for the proposed works is not within an area or an activity regulated under the new regulation (O. Reg. 41/24), then the applicant will be advised in writing that a permit is not required for the proposed works.

Applications Submitted After April 1, 2024

All applications received on or after April 1, 2024, will be subject to the provisions of the CA Act and O. Reg. 41/24.



Extension of Permissions Issued under the Current Regulation

Permits issued prior to April 1, 2024, and have expiry dates beyond April 1, 2024, will remain valid for the duration identified on the permission. Inspections and conditions enforced under the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation will continue until the permission expires unless the condition no longer applies based on new legislative and regulatory tests.

A request for extension of a permit issued before April 1, 2024, that is received after April 1, 2024, will be considered in accordance with the CA Act and O. Reg. 41/24. An applicant requesting an extension will be notified in writing that an extension is not required if the permit is for a development activity or interference/alteration not within a regulated area established under O. Reg. 41/24 or is otherwise subject to an exception under the same.

Requests for an extension of the existing permit must be received by the Authority prior to the date of expiry shown on the permission.

2. Planning Applications

Planning Applications Submitted Before April 1, 2024

All planning applications received before April 1, 2024, but still under review after this date, will be conducted in accordance with the O. Reg. 686/21: Mandatory Programs and Services, O. Reg. 596/22: Prescribed Acts – Subsections 21.1.1 (1.1) and 21.1.2 (1.1) of the Act, as well as based on the provisions of the CA Act and O. Reg. 41/24.

Planning Applications Submitted After April 1, 2024

All plan input and review will be conducted in accordance with the O. Reg. 686/21: Mandatory Programs and Services, O. Reg. 596/22: Prescribed Acts – Subsections 21.1.1 (1.1) and 21.1.2 (1.1) of the Act, as well as based on the provisions of the CA Act and O. Reg. 41/24.

3. Violation Notices and Legal Actions

Violation Notices issued prior to April 1, 2024, for works in an area or activity no longer regulated under the new O. Reg. 41/24, upon satisfactory resolution of the matter, the proponent will be issued a letter advising that the works occurring in violation of the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation have remedied/rectified and the file is closed.

Violation notices issued and prosecutions commenced on or after April 1, 2024, will confirm with Parts VI and VII of the Act and O. Reg. 41/24.

Legal actions that commenced prior to April 1, 2024, will proceed where appropriate under consultation with legal counsel.

4. Other Agency Approvals

Issuance of a permit does not relieve the applicant from the responsibility of acquiring approval from other agencies or relieve the applicant from compliance with any conditions that other agencies may impose on the work.