

COUNCIL – MARCH 26, 2024

STAFF COMMUNICATIONS

Distributed March 22, 2024

Subject

SC1. Memorandum from the Deputy City Manager, Planning & Growth Management and the Deputy City Manager, Legal and Administrative Services and City Solicitor dated March 26, 2024. Conservation Authorities Act (CAA)

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**STAFF COMMUNICATION
FOR INFORMATION ONLY**

**SC 1
Staff Communication
Council – March 26, 2024**

DATE: March 26, 2024

TO: Mayor and Members of Council

FROM: Haiqing Xu, Deputy City Manager, Planning & Growth Management
Wendy Law, Deputy City Manager, Legal and Administrative Services and
City Solicitor

**RE: STAFF COMMUNICATION – *Conservation Authorities Act (CAA)*
Council, March 26, 2024**

Purpose

The purpose of this Staff Communication is to provide Council with an overview of recent legislative changes, including regulatory changes under the *Conservation Authorities Act*, R.S.O. 1990, c. C. 27 (“CAA” or the “Act”).

Background

As part of the More Homes Built Faster: Ontario’s Housing Supply Action Plan 2022-23, the Provincial government aims to streamline approvals under the CAA to focus on natural hazards and meet housing supply needs more efficiently.

On February 16, 2024, regulation [O. Reg. 41/24](#) “Prohibited Activities, Exemptions and Permits” was filed pertaining to advancing regulatory changes under the CAA. O. Reg. 41/24 impacts activities under Part VI “Regulation of Areas of which Authorities have Jurisdiction” of the CAA. Amendments to Part VI of the CAA were introduced through:

- Bill 139 – *Building Better Communities and Conserving Watershed Act, 2017*;
- Bill 229 – *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2000*; and
- Bill 23 – *More Homes Built Faster Act, 2022*.

O. Reg. 41/24 will come into force on April 1, 2024.

The CAA currently has an amended version of s. 28 which will be proclaimed into force on April 1, 2024 (the same day that O. Reg. 41/24 comes into force).

The amendments to Sections 28 and 28.1 of the CAA outline the development activities that are prohibited and include provisions with respect to the updated permitting framework.

Effective April 1, 2024, the 36 Conservation Authority-specific regulations will be revoked and replaced with one new minister's regulation governing prohibited activities, exemptions and permits under the CAA, being O. Reg. 41/24.

This updated process applies to all Conservation Authorities. The Mandatory Programs and Services regulation (O. Reg. 686/21) under the CAA is also amended to include new Conservation Authority ("authority") reporting requirements on permitting activities.

Specific changes include:

- Updating definitions (including "watercourse" and "other areas in which development should be prohibited or regulated") to prescribe areas where development is prohibited
- Exempting low-risk activities from authority approval and permitting
- Limiting the conditions an authority may attach to a permit
- Streamlining and clarifying rules for development to ensure transparent and consistent administration of authority permits
- The issuance of permits up to a maximum validity of 60-months for completing activities.

Analysis

Prohibited uses and permits

The authority can require a permit to allow activity in its area of jurisdiction that would otherwise be prohibited under the CAA such as activities to straighten, change or divert an existing river, creek or stream; change or interfere with a wetland; or development activities in hazardous lands, wetlands, or river or stream valley limits. A permit may be issued if the authority is of the opinion that:

- the activity is not likely to affect the control of flooding, erosion, dynamic beaches or unstable soil or bedrock;
- the activity is not likely to 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; and
- other requirements as may be prescribed.

Amendments to the CAA eliminate any requirement for the authority to assess whether the activity is not likely to affect pollution or the conservation of land when issuing a permit.

The regulation contains and carries forward existing definitions that will be repealed from the CAA on April 1, 2024, and it provides new definitions for "watercourse" and a description of "river or stream valleys". There is also a prohibition of development activities in areas within an authority's jurisdiction that are within 30 m of a wetland.

The authorities shall develop maps depicting its areas of jurisdiction where development activities are prohibited, and the maps shall be made available to the public on the authority's website. The maps will be reviewed at least once annually and required updates will be made. Significant proposed updates (such as enlargements or

reductions to the areas of prohibited development activity) will require notice to stakeholders, the municipality and the public.

Pre-application consultation

The authority may engage the applicant in a pre-submission consultation to confirm the requirements of a complete application and may include a meeting or a site visit. Information, studies and plans required as part of a permit application submission are detailed in the regulation.

Complete applications

The regulation provides a process by which the applicant is advised within 21 days after the filing of an application whether it is deemed by the authority to be complete. The applicant may request a review of the authority's notice of completeness or failure to issue such a notice.

Conditions on permits

The authority may include conditions on a permit issued under CAA s. 28.1 only if the authority is of the opinion that the conditions:

- Assist in preventing or mitigating any effects on the control of flooding, erosion, dynamic beaches or unstable soil or bedrock;
- 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; or
- Support the administration or implementation of the permit, including conditions related to reporting, notification, monitoring and compliance with the permit.

The authority shall not refuse an application for a permit or attach conditions to a permit unless the applicant has been given an opportunity to be heard by the authority, which is referred to as a "hearing".

Application decision reviews and appeals

After holding a hearing with respect to a permit application, the written reasons for the decision are issued by the authority. The applicant who was refused a permit or who objects to the conditions imposed may request the Minister to review the authority's refusal of a permit or conditions on a permit. Alternatively, the applicant may appeal the authority's decision to the Ontario Land Tribunal ("OLT"), if the Minister has not conducted a review of the authority's decision. The CAA provides for the applicant to file non-decision appeals with the OLT when the authority does not issue a decision within 90 days after an application is made, or when the Minister fails to review an authority's decision despite indicating that it would.

Permits for lands subject to a MZO or CIHA

Where an application for a permit is made to permit a development project in the authority's area of jurisdiction for lands subject to a Minister's Order under s. 34.1 or 47 of the *Planning Act* ("CIHA/MZO Orders"), but not located in the Greenbelt Area, a permit shall be issued (subject to such other requirements as may be prescribed). The authority may specify conditions on the permit.

Conditions to mitigate include:

- Any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or unstable soil or bedrock;
- Any conditions or circumstances created by the development project 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; or
- Any other matters that may be prescribed by regulations.

Similar to the standard permitting process under CAA s. 28.1, the authority shall not attach conditions on the permit unless the applicant was given an opportunity to be heard. An applicant who objects to a permit condition may request that the Minister review the condition. Alternatively, the applicant may appeal to the OLT.

Where a permit is issued for lands under a CIHA/MZO Order, the authority shall enter into an agreement with the permit holder and may add a municipality or other person to the agreement, as they consider appropriate. The agreement shall set out actions or requirements that the permit holder must satisfy in order to compensate for ecological impacts and any other impacts that may result from the development project.

Permit period of validity

A permit issued shall be valid for a maximum of 60 months, which includes any extensions.

Development authorized under the Planning Act

The amendments to the CAA provide an exception to requiring a permit for certain activities in the area of jurisdiction of an authority, if the activity is part of development authorized under the *Planning Act* within prescribed municipalities and any prescribed conditions are satisfied.

Policies and Procedures

The authority shall develop policies and procedures with respect to permit applications and reviews that must include:

- details on pre-submission consultations and complete permit application requirements;
- procedures for a request for review;
- standard timelines to make a decision on a complete permit application;
- policies and procedures on the administration of permit issuances; and
- a process for periodic review of policies and procedures.

Legislative Changes and Building Code implications

The Building Code's list of applicable laws for building permits and conditional building permits points to s. 28(1)(c) of the CAA with respect to permission of the authority for the construction of a building or structure in regulated areas. However, the April 1, 2024 changes to section 28 of the CAA includes a renumbering of the section. In the amended version of section 28, clause 28(1)(c) is no longer listed. An update by the Province to the Building Code's list of applicable laws will be necessary to continue to

require permission from the TRCA in regulated areas prior to the issuance of a building permit or conditional building permit.

In addition, O. Reg. 41/24 introduces exceptions for certain classes of construction that would not be subject to the amended section 28 (prohibited activities provision) of the CAA. These include certain types of seasonal floating docks; certain types of non-habitable accessory buildings or structures; certain types of unenclosed detached decks or patios; and the reconstruction of a non-habitable garage meeting certain criteria.

Conclusion

Overall, the regulatory changes under the *Conservation Authorities Act* will provide a streamlined approval process for the issuance of permits by the authorities. The 36 separate conservation authority regulations will be replaced by O. Reg. 41/24, thereby creating uniformity in the permitting process. The administrative process of issuing permits is updated to provide landowners with avenues to escalate issues encountered with the issuance of permits or conditions attached hereto.

For more information, please contact Christina Bruce, Director of Policy Planning & Special Programs, ext. 8231.

Approved by



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