

July 26, 2017

Via email (mnrwaterpolicy@ontario.ca)

Finn MacDonald, Policy Officer  
Ministry of Natural Resources and Forestry  
Policy Division, Natural Resources Conservation Policy Branch  
300 Water Street  
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Re: Proposed amendments to the Conservation Authorities Act as part of Bill (139), the Building Better Communities and Conserving Watersheds Act, 2017; EBR Registry Number 013-0561

The undersigned have prepared the following comments in response to the proposed amendments to the *Conservation Authorities Act* (per Schedule 4, Bill 139). These are our preliminary submissions on this matter; we reserve the right to provide more fulsome and detailed comments as Bill 139 moves through the legislative process. We appreciate the opportunity to provide our input and look forward to working with the Ministry of Natural Resources and Forestry to ensure natural resource conservation, restoration, sustainable development and wise management in Ontario's watersheds.

Many of our organizations have been involved in prior consultations related to the Conservation Authorities Act Review, by, among other things, commenting on the Conservation Authorities Act Review Discussion Paper (EBR Registry Number: 012-4509) in 2015 and commenting on the Conservation Authorities Act Review Consultation Document – Conserving Our Future: Proposed Priorities for Renewal (Environmental Registry Number: 012-7583) in 2016.

Overall, we are supportive of the proposed amendments to the *Conservation Authorities Act* in Bill 139. The proposed amendments will enable improved transparency and accountability for conservation authorities (CAs) and enhanced ministerial oversight. In particular, we are pleased to see proposed provisions that:

- Clarify the purpose of the *Conservation Authorities Act*: “The purpose of this Act is to provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario.” (s0.1); we strongly encourage clarifying that terms contained in the purpose provision (eg, “development” and “management”) are aimed at ensuring overall watershed health
- Clarify and enhance the processes for enlarging CA areas of jurisdiction, amalgamating CAs, and dissolving CAs, including particularly what will be needed for quorum and majority vote for resolutions, that an amalgamation resolution will require the Minister of Natural Resource and Forestry's approval, and that there will be public notice of meetings for amalgamation and dissolution
- Improve membership and governance of CAs, including membership composition, advisory committees, open meetings, and a requirement to establish by-laws that will be subject to ministerial oversight; the membership composition will be left to future regulations and we strongly encourage that qualifications of appointees include some specified criteria that are representative of various aspects of the public interest in watershed health

- Expand CA powers and duties, consistent with enhanced objects, which allows for both programs and services; including the ability to enter into a memorandum of understanding with a municipality (that must be made public and will be subject to periodic review), requirements to set a fee schedule and fee policy (that must also be made public and subject to periodic review), and clear processes, with rights of appeal to tribunals, for recovering capital costs and “operating expenses” (newly defined)
- Clearly prohibit changing watercourses or interfering with wetlands, and enable further prohibitions to be made in the future
- Introduce a permitting framework that enables CAs to both approve and refuse or cancel permits for activities that would otherwise be prohibited, including requirements for reasons for refusal and right to appeal decision to refuse
- Enhance compliance and enforcement mechanisms

Although we see great potential in the proposed amendments, we have serious concerns about the number of provisions that will not come into force until a date to be proclaimed by Cabinet, the extent to which the new amendments will require regulations before the intention of those provisions can be realized, and the lack of a clear commitment to increased resources to accompany the increased provincial oversight and enhanced CA responsibility. An example of an issue left to future regulations is the exemptions from the proposed prohibition on changing watercourses or interfering with wetlands. In Bill 139, there is an explicit exception for aggregate operations authorized under the *Aggregate Resources Act* and the ability to allow for more exceptions through ministerial regulations, without limit. With this particular delegated authority to add exemptions to the prohibition, we suggest that limits on exercising that discretion must be set.

We anticipate providing additional detail related to our assessment of Bill 139 through the legislative process later this year.

We hope you find these comments helpful and would be happy to meet with you to discuss our submission.

Sincerely,

Theresa McClenaghan, Executive Director and Counsel  
Canadian Environmental Law Association

Julia Croome, Barrister & Solicitor  
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Tim Gray, Executive Director  
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