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October 16, 2015

Ms. Julia Holder
Policy Analyst
Natural Resources Conservation Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street
Peterborough, Ontario
K9J 8M5

Dear Ms. Holder:

Re: *Conservation Authorities Act* Review

I am submitting the following comments on the Coordinated Review on behalf of my client, the North Gwillimbury Forest Alliance (NGFA), whose mission is to protect the 1,418 ha North Gwillimbury Forest in the Town of Georgina, one of the 10 largest forests in the Lake Simcoe watershed.

Within this forest lies the 200 ha Maple Lake Estates property, which is undeveloped but is subject to long-ago planning approvals, to build a 1,073 unit residential and recreational development in a provincially significant wetland. Ninety-five per cent of the property is within the regulated area of the Lake Simcoe Region Conservation Authority. No Section 28 permit has been issued for these lands, although the owner has recently applied for one. As a result of my client's concerns about a possible approval and how Authority policies might affect the issue of an approval, my client and I have had extensive dialogue with the Authority over the last two years, and as a result have become deeply interested in the broader legal and policy context which is now the subject of your review. The following comments, while informed by NGFA's and my experience with Maple Lake Estates, are not specific to that matter, and I offer them in the interests of good policy and good planning generally.

The NGFA and I are therefore recommending the following. These recommendations respond to questions 1b, 3b, and 4 in the Discussion Paper. Comment and rationale are provided below each recommendation.

1. **Amend the *Planning Act* to determine, or through other means clarify, that conservation authorities (CAs) are subject to sections 3(5) and 3(6) of that Act, and that planning-related decisions of CAs are "exercise of . . . authority that affects a planning matter" under section 3(5).**

It is not clear, based on my own extensive review including discussion with knowledgeable counsel, whether a CA is actually a "local board" for purposes of sections 3(5) and 3(6) of the Planning Act. And, as the Discussion Paper says, CAs are no longer agencies of the Province, so it is not clear

whether in making decisions or providing comments on planning-related matters, CAs are subject to *Planning Act* requirements. Even if they are, it is not clear whether CA decisions re policies, permits, etc. constitute "exercise of . . . authority that affects a planning matter" for purposes of sec. 3(5). To the best of my knowledge, none of these unclear points has ever been adjudicated.

2. Amend the *CA Act* to define "conservation of land" for purposes of Section 28, as proposed in the Ministry of Natural Resources-Conservation Ontario *Draft Guidelines* of 2008.

Implementing this 2008 recommendation to define "conservation in land" in law would provide greater certainty and is long overdue.

3. For the purposes of decision-making and public involvement (see recommendations 4 and 5), amend the Section 28 regulations, and the *CA Act* if necessary, to distinguish between "major" and "minor" applications. A"major" application would meet one or more of a list of criteria, which could include:

- **Permit length over 24 months, a distinction that has already been recognized in section 3(3) of the Section 28 regulations.**

- **Magnitude of the development, analogous to (though not necessarily the same as) the definitions of "major development" in the Oak Ridges Moraine Conservation Plan and Lake Simcoe Protection Plan.**

- **Currency of the CA's involvement in any prior planning approval. This could be phrased along the lines of the following:**
  - **the proposed development would also require *Planning Act* approval, but such approval has not been given; or,**
  - **the proposed development was specifically enabled by a *Planning Act* division of land and/or zoning bylaw amendment/development permit, but the latest of these approvals was given five years or longer before the Section 28 permit application.**

Most Section 28 permit applications are routine, with the impacts of the development to be enabled either minimal, or already thoroughly addressed through CA involvement in a recent planning approval process. A small minority are not. The present "one-size-fits-all" permits process does not meet contemporary standards of openness, transparency, and public involvement for that small minority.

4. Amend Regulation 681/94 under the *Environmental Bill of Rights, 1997,* to include proposals to issue Section 28 permits, at least for "major" applications, as Class II proposals for instruments under that Act.

The effect of prescribing applications under the *Environmental Bill of Rights* would be that:
- they would be posted on the Environmental Registry, and
- anyone would be able to apply to the Mining and Lands Commissioner for leave to appeal the granting of a permit.

5. Amend the Section 28 regulations and if necessary the *CA Act*, and/or amend Ministry policies and procedures, so that the following would be required for a "major" application:

- **Notice of the complete application and at which Board meeting it will be considered mailed to each owner within 120 m of the subject lands (if necessary, two separate mailings), and posted on the CA website.**
- **Availability of the application materials for inspection at the CA office under reasonable conditions, and by posting on the CA website.**
- **Consideration of and decision on the application at an open Board meeting (no delegation of decision to staff).**
- **Availability of the staff report and any applicant response for inspection at the CA office and by posting on the CA website, once they have been provided to the Board.**
- **Provision for the public to make written submissions prior to the Board meeting, that will be circulated to the Board.**
- **Provision for the public to make oral submissions at the Board meeting, under reasonable conditions including reasonable time limits.**

It is my understanding that nothing in the *Act* currently prevents a CA Board, when deciding an application, from notifying the public and receiving and considering public submissions provided that there is no inference these actions confer standing. However, some CAs have a different opinion, so clarification, and direction when it comes to major applications, would be welcome.

I note the opinion of the Environmental Commissioner of Ontario in considering an application for review of provisions of the *Conservation Authorities Act*:

> "Applicants are able to appeal decisions made by the CA regarding permits issued under Section 28 of the *CAA* but there is no third party appeal process. This is important because CA permits are not prescribed as instruments under the [*Environmental Bill of Rights, 1993*] and therefore not required to be posted on the Registry for public input. Currently, the public has limited, if any ability to participate in the issuance of *CAA* permits. It is at the discretion of the CA board to allow public delegations to the board before a permit decision is made. Environmental organizations have recommended MNR amend the CA board structure to include representation from non-municipal members, such as environmental organizations or the public, in order to participate in the review of permit applications. The ECO is not sure this is the best solution but suggests, at the least, MNR consider prescribing CA permits as instruments under the *EBR*." (Annual Report Supplement 2009/2010, p. 296.)

Of particular interest is that the Commissioner found that Authority Boards do have the discretion to allow public submissions, and also found that opportunities for public involvement in the issue of Section 28 permits should be improved.

I would also note that the Town of Georgina Council, which is also well acquainted with the Maple Lake Estates situation, passed the following resolution on July 15, 2015:

> "Whereas the Lake Simcoe Region Conservation Authority (LSRCA) as a matter of practice, reviews section 28 permit requests pursuant to the Conservation Authorities Act in a manner which does not currently provide for public review, comment or consultation;
>
> "And Whereas the residents of the Town of Georgina have a great deal of public interest in such applications;
>
> "And Whereas the Province of Ontario is planning a review of the Conservation Authorities Act through the Ministry of Natural Resources and Forestry (MNRF);
>
> "Therefore the Town of Georgina requests that a public consultation requirement be added into the legislative process for disclosing and reviewing s. 28 permit requests pursuant to the Conservation Authorities Act;
>
> "And Further, that the Town of Georgina Council direct staff to participate in any such review to be completed by the Ministry of Natural Resources and Forestry with a view towards, but not limited to, the establishment of an open and transparent public process;
>
> "And that staff submit a report to Council once a review has been initiated."

A staff report recommending consultation requirements for "large-scale development" was considered by Georgina Council on October 7.

6. Amend the Section 28 regulations and if necessary the *CA Act*, and/or amend Ministry policies and procedures, so that the following would be required for all applications:

- **Posting a notice on the subject lands, similar to that required for a building permit, tree removal, etc.**
- **Posting on a CA website page, that would list all applications and their disposition.**

This would provide transparency consistent with today's best practices for any legal permission involving lands and resources, without unreasonably encumbering the large majority of applicants whose applications are "minor".

7. Amend the *CA Act*, or otherwise direct CAs, so that compensation cannot be considered as part of the approval for a Section 28 permit to enable development that would adversely affect a regulated wetland, unless the wetland is not provincially significant or the development would otherwise be permitted under the Provincial Policy Statement (PPS) or a Provincial plan (for example, infrastructure).

Although the subject of compensation is not addressed in the Discussion Paper, some CAs permit it in their policy documents, without necessarily limiting it to the circumstances recommended above. As well, this is a key theme of the Ministry's concurrent discussion paper on Wetland Conservation

in Ontario, and given the importance of wetlands to CAs, some interaction between the two consultations is inevitable.

In my view, to apply compensation policies to development in a provincially significant wetland, other than where it would otherwise be permitted under the PPS, would be completely inconsistent with the intent of the PPS.

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I hope these comments will assist Ministry staff in their important task. NGFA and I look forward to the next stages in the review process and our participation in them.

Yours sincerely,

[original signed by]

Anthony Usher, MCIP, RPP

cc. Mike Walters
Harold Lenters