



May 6, 2024

The Honourable Graydon Smith
Minister of Natural Resources and Forestry
Whitney Block
5th Floor
99 Wellesley Street
Toronto, ON
M7A 1W3

Re: ERO No. 019-8320: New Minister's Permit and Review Powers Under the *Conservation Authorities Act*

Dear Minister Smith,

The Canadian Environmental Law Association (CELA) writes to provide comment in respect of the proposed regulation regarding the Minister's new permit and review powers under the *Conservation Authorities Act*. As submitted below, CELA recommends that the Ontario government not proceed with this proposed regulation. In the alternative, CELA recommends the decision be paused in the interim in order to undertake further work in respect of the matters submitted below, and to determine how these concerns would be mitigated.

CELA's Background and Experience

CELA is a public interest law clinic dedicated to environmental equity, justice, and health. Founded in 1970, CELA is one of the oldest environmental advocates for environmental protection in the country. With funding from Legal Aid Ontario, CELA provides free legal services relating to environmental justice in Ontario, including representing qualifying low-income and vulnerable or disadvantaged communities in litigation.

CELA also works on environmental legal education and reform initiatives. For example, CELA has been actively involved in the development and implementation of the EBR. In the early 1990s, CELA served as a member of the Environment Minister's Task Force that assisted in drafting and consulting on the EBR. After the enactment of the EBR, CELA lawyers have provided summary advice, public education, and client representation in relation to various EBR tools, including applications for review, applications for investigation, third-party appeals of instrument decisions, and judicial review proceedings arising under the EBR.

CELA was also extensively involved in the MNRF instrument classification exercise under the EBR. Similarly, CELA's casework, law reform, and summary advice activities have addressed water-related projects, facilities, or activities regulated under various provincial statutes (e.g., Environmental Assessment Act, Ontario Water Resources Act, Planning Act, Conservation Authorities Act, Drainage Act, Public Lands Act, Crown Forest Sustainability Act, Lakes and

Canadian Environmental Law Association

T 416 960-2284 • 1-844-755-1420 • F 416 960-9392 • 55 University Avenue, Suite 1500 Toronto, Ontario M5J 2H7 • cela.ca

Rivers Improvement Act etc.), Accordingly, CELA has carefully considered the proposed regulation. Our detailed comments on various aspects of the current ERO posting are set out below.

Overview of Recent Changes in Ministerial Powers

Recent amendments to the Conservation Authorities Act took effect on April 1, 2024. These changes grant new powers to the minister to oversee permitting decisions for development activities that need a permit. This includes alterations to watercourses and wetlands or developments in areas regulated by a conservation authority, such as hazard lands, wetlands, river valleys, shorelines, and inland lakes.

Specifically, these new powers (section 28.1.1) enable the Minister to:

- Prevent a conservation authority from issuing a permit for a specified activity or class of activity;
- Take over the permitting process in the place of a conservation authority (e.g., if a decision is pending);
- Review conservation authority permitting decisions at the request of development proponents;
- Override a conservation authority's decision; and
- Issue a permit in the place of a conservation authority

The proposed regulation details the circumstances under which the Minister can exercise these new powers. However, it fails to specify the procedural framework for the Minister's exercise of the section 28.1.1 powers. Nor does the proposal address how the capacity for decision-making will be built, and ensure the process remains both transparent and procedurally fair. Conservation authorities possess the technical expertise on watershed conditions, and their science-based approach ensures apolitical, informed decisions that prioritize the protection of people and their properties. Without the conservation authority's resources like flood plain mapping, modelling, and a comprehensive understanding of watershed conditions, it is unclear how the Minister will make informed decisions. Additionally, unlike conservation authorities, the Ministry lacks a specific policy framework to guide the interpretation of regulations. This raises concerns that while the Ministry may seek to control the permitting process, it might not be equipped to issue permits that adequately safeguard public health, safety and property.

The new regulation would significantly expand the Minister's permitting authority to include a vast range of activities linked to provincial interests such as housing, community services, transportation, economic growth, employment, and mixed-use developments. This expansion implies that the Minister's powers could potentially encompass nearly all types of development projects requiring a permit from a conservation authority. This is concerning to CELA for the reasons detailed below.

Key concerns with the proposed regulation:

1. **Expertise and Decision-Making:** The regulation proposes that the Minister use the same criteria as conservation authorities to make decisions. Conservation Authorities' decision-making processes are based on their long expertise related to public health and safety in connection with natural hazards. For instance, the Minister could have the authority to approve a permit for institutional purposes, such as building hospitals or schools, even in locations where a Conservation Authority would withhold approval due to being situated in hazard lands. Therefore, the Ministry would be making a permitting decision in an area where a municipality would not approve a development order from a planning perspective. Consequently, this could lead to inconsistencies between provincial frameworks and municipal planning permissions, creating unnecessary redundancies. The process needs to remain transparent, procedurally fair, and apply a watershed lens.

Above all else, decisions need to hold the safety of people and their properties in the highest regard. Ontario's Conservation Authorities already hold specialized knowledge and skills in watershed management, essential for accurate and informed permitting decisions. They utilize advanced flood modeling to assess the impacts of development on watersheds, a capability that the Ministry lacks. This expertise and capacity would be expensive and challenging to develop and there is no good public policy reason for duplicating these efforts given our strong current framework under current the CA regulations. Additionally, the proposed regulation allows the Minister to request input from conservation authorities but does not mandate such consultation. This optional consultation could lead to a scenario where the Minister makes decisions without insights from those within conservation authorities who hold vital knowledge and expertise, and the Minister may make decisions based solely on input from proponents of the permit in question.

2. **Compliance and Oversight:** The draft regulation does not detail how the MNRF intends to monitor and enforce adherence to its permit decisions, which is necessary for identifying and mitigating the adverse effects of development. For the Ministry to effectively perform this function, it would need to train and hire staff in an area where expertise and capacity currently exists, posing unnecessary institutional duplication.
3. **Risk to public health and environment:** Conservation Authorities contribute a watershed viewpoint to the decision-making process for planning and development. This approach ensures that developments do not expose communities to risks such as flooding and other impacts of climate change, particularly from the loss of wetlands, woodlands, and farmland. Without this localized insight, technical expertise, and experienced judgment, decisions made by the Minister might lead to negative cumulative effects and heightened dangers to public health, safety and the environment.

4. **Cutting Red Tape?:** The proposed regulation suggests that the intended regulation will “save proponents time and resources.” However, as submitted herein, there is a high risk that the proposed regulation will lead to inefficiency, confusion, inconsistency, and prolonged processes.

Summary

CELA strongly recommends that the MNRF recall and reconsider this proposed regulation that is flawed, unnecessary, and underdeveloped. Conservation authorities are tasked with overseeing permit applications from a watershed perspective, which is essential for mitigating flood risks, managing interactions with wetlands and waterways, and avoiding broader negative effects. The Conservation Authority framework protects lives, limits property damage, decreases costs for both public and private sectors, and regulates the negative effects of development. It is crucial for the well-being of people in Ontario that the responsibilities of conservation authorities are neither weakened nor bypassed with an un-needed duplication of process that lacks these safeguards.

Many thanks for the opportunity to submit a comment on this proposal.

Regards,



Laura Tanguay
Water Policy Coordinator
Canadian Environmental Law Association

Cc:
Tyler Schultz, Ontario’s Commissioner of the Environment

