



## MEMORANDUM



### **Updates to the *Conservation Authorities Act***

**By: Stephanie Fleming**

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The Ontario government made several changes to the *Conservation Authorities Act* in 2020, to come into force on a date to be specified by the proclamation of the Lieutenant General. That date has been set for April 1, 2024. An accompanying regulation, O. Reg. 41/24, which sets out certain criteria for these revisions will also come into effect on this date.

The current Act requires landowners to obtain permits before attempting to alter a watercourse or wetland, among others, or carrying out any development in areas which could affect the control of flooding, erosion, dynamic beaches, or pollution or the conservation of land under s.28. The changes to this Act will alter this requirement.

#### **Removal of Permitting Powers Under Revised Act**

From April 1, the Conservation Authorities will still be responsible for activities within an existing channel of a watercourse and any development activity within their jurisdiction on hazardous lands, wetlands, river or stream valleys as determined in accordance with regulations, areas adjacent or close to the shoreline of the Great Lakes and St. Lawrence River System or an inland lake that may be affected by flooding, erosion, or dynamic beach hazards (determined or specified by regulation), or other areas as determined by regulations (s.28(1)). However, if the activity is part of a development that was authorized by a municipality under the *Planning Act*, a landowner would no longer be required to obtain a permit from the local Conservation Authority. However, the municipality could place certain conditions and restrictions on this approval that a developing landowner would be required to satisfy prior to starting said development. It is possible that the local Conservation Authority will provide comments to municipalities in respect of any sort of development that falls within their jurisdiction, rather than providing permits.

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### **Retained Permitting Powers**

However, these changes do not entirely remove the powers of a Conservation Authority to grant permits. If a landowner wishes to make alterations that would fall under the new s.28(1), but this alteration is not part of a development approved under the *Planning Act*, they would still be required to obtain a permit to do so under s.28.1 of this revised *Conservation Authorities Act*. Under this, the Authorities may issue such permits if, in their opinion, the activities would fall under one of the following categories:

- (a) That the activity is not likely to affect the control of flooding, erosion, dynamic beaches or unstable soil;
- (b) That the activity is not likely to create conditions or circumstances that might jeopardize the health or safety of people or result in the damage or destruction of property in the event of a natural hazard; and
- (c) Any other requirements set out by regulation.

An Authority may also attach conditions to a permit granted under s.28.1 as well, but only if it will assist in preventing or mitigating any effects on the control of flooding, erosion, dynamic beaches, unstable soil or bedrock, 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.

### **Exceptions to Permit Requirements**

Under s. 5 of O. Reg. 41/24, there are several exceptions to what a “development activity” under s.28(1)2 applies to. This includes the following:

- (a) The construction, reconstruction, erection, or placement of:
  - i. a seasonal floating dock under 10m<sup>2</sup> that can be removed in case of flooding and does not require any permanent support structures;
  - ii. a fence made with certain material that is not within a wetland or watercourse
  - iii. any agricultural in-field erosion control structures that are not within or have an outlet of water directed to a watercourse, wetland, or river valley;
  - iv. A non-habitable accessory building or structure under 15m<sup>2</sup> outside a wetland or watercourse; or
  - v. An unenclosed detached deck under 15m<sup>2</sup> that is not within a watercourse or wetland and does not use cantilevering
- (b) The installation of new tile drains, provided it complies with several criteria, including that it is not within 30m of a wetland or 15m of a watercourse and does not outlet to same, or the maintenance and repair of existing tile drains;
- (c) The installation, maintenance, or repair of a pond for watering livestock that is not connected or within 15 metres of a wetland or watercourse. No excavated material for such a pond can be deposited within an area where s.28(1) of the *Conservation Authorities Act* applies;
- (d) The maintenance or repair of a driveway or private lane that is outside a wetland but falls within one of the other areas set out at s.28(1) or the maintenance or repair of a public road, provided these are not extended or widened and the existing elevation, bedding, and existing culverts are not altered;
- (e) The maintenance or repair of municipal drains; and
- (f) The reconstruction of a non-habitable garage with no basement, provided the reconstruction does not exceed the existing footprint of the garage.

### **Key Definitions**

The definition of “development activity”, “hazardous land”, “watercourse” and “wetland” will be prescribed by s.1 of O. Reg. 41/24. The definitions have been set out below:

“development activity” means,

- (a) the construction, reconstruction, erection or placing of a building or structure of any kind,

(b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,

(c) site grading, or

(d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere; (“activité d’aménagement”)

“hazardous land” means land that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock; (“terrain dangereux”)

“watercourse” means a defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs; (“cours d’eau”)

“wetland” means land that,

(a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,

(b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,

(c) has hydric soils, the formation of which have been caused by the presence of abundant water, and

(d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which have been favoured by the presence of abundant water. (“terre marécageuse”)

(2) The definition of “wetland” in subsection (1) does not include periodically soaked or wet land used for agricultural purposes which no longer exhibits a wetland characteristic referred to in clause (c) or (d) of that definition.

This regulation also sets out the standards by which flooding events shall be calculated by the various Conservation Authorities under the Schedules.

If you have any questions, please reach out to my contact information at the bottom of the first page.

-SAF