




COMMUNICATION UPDATE

TO:	Mayor and Members City Council
DATE:	April 5, 2024
SUBJECT:	Update to the <i>Conservation Authorities Act</i> for the Regulation of Development for the Protection of People and Property from Natural Hazards in Ontario (Ontario Regulation 41/24) (City Wide)
WARD(S) AFFECTED:	City Wide
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

The purpose of this Communication Update is to provide Council with a summary of the most recent Provincial update to the *Conservation Authorities Act* as it relates to the Regulation of Development for the Protection of People and Property from Natural Hazards in Ontario, and how the changes impact the development review processes within the City of Hamilton.

The Province's recent efforts to increase housing supply and streamline development approvals processes began in 2017 and included the proclamation of legislation such as Bill 23, *More Homes Built Faster Act*, which resulted in changes to the *Conservation Authorities Act*. Staff presented a detailed summary of comments on Bill 23 through Report PED22207 to Planning Committee on November 29, 2022.

On February 16, 2024, the Provincial government posted a decision that further implements the proposed regulatory changes to the *Conservation Authorities Act*. Ontario Regulation 41/24 is intended to streamline regulatory requirements to focus on natural hazards and public safety, to clarify where certain development activities are prohibited within the Act instead of within the individual Conservation Authority regulations, and to include new regulation making authority with respect to the updated permitting framework.

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City staff met with the four Conservation Authorities that have jurisdiction within the City of Hamilton (Hamilton Conservation Authority, Niagara Peninsula Conservation Authority, Grand River Conservation Authority, and Conservation Halton) on March 25, 2024, to better understand the changes to the Conservation Authority development regulations. The new legislation includes broader policy level impacts to municipalities, updates to delegated authority for permits and hearings, and the Conservation Authorities' transition plans for active and new development applications.

Updated rules for the protection of people and property from natural hazards

Communication from the Ministry of Natural Resources and Forestry, attached as Appendix "A", advised that effective April 1, 2024, updated permitting related provisions of the Act will come into effect, supported by a new Ontario Regulation (O. Reg.) 41/24: Prohibited Activities, Exemptions and Permits. The new rules will apply to all conservation authorities and, among other changes, will identify prohibited activities and refine the regulated areas where a conservation authority issued permit is required.

Key changes under O. Reg. 41/24 include:

1. Updating some definitions and areas where development activities are prohibited, while maintaining important provincial standards. Notable amendments include:
 - a. An updated definition of Watercourse to remove "identifiable depression in the ground" and replaced it with:
 - "a defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs."
 - b. The removal of the definition of Pollution.
 - c. Reducing the regulated area adjacent to wetlands from 120 metres for provincially significant wetlands to 30 metres for all wetlands.
2. Requirements for mapping of regulated areas to be made available online and for public notification to be given of any mapping changes.
3. Exemptions from the requirement for a conservation authority permit for some low-risk activities, subject to certain conditions, such as sheds, removable docks, garage rebuilds, fencing, and agricultural drainage.
4. Limiting the conditions that can be included on a permit to matters related to natural hazards and public safety and general permit administration.

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5. Service standards for permit issuance including pre-consultation and confirmation of complete applications within 21-days and requiring annual reporting on permitting statistics including reporting on the level of conservation authority compliance with new regulatory requirements.
6. Enabling applicants to appeal to the Ontario Land Tribunal if a permit decision is not made within 90-days or appeals of permitting fees charged by conservation authorities to the Ontario Land Tribunal.
7. Enabling Minister of Natural Resources and Forestry's tools regarding the review of permit decisions and the issuance of permits.
8. Updated enforcement powers and provisions regarding offences provisions under the act, including stop work orders and increased penalties.

As required by O. Reg. 41/24, the Conservation Authorities must provide a transition plan to allow for existing applications and permits to proceed under the current policies and procedures. All applications submitted on, and after April 1, 2024, will follow the new legislative and regulatory framework while active development applications will continue under the rules and regulations that were in place at the time of submission. The Hamilton Conservation Authority and Conservation Halton provided a memo (attached as Appendix "B") on March 15, 2024, to the City of Hamilton with respect to the legislative and regulatory changes and the effect on their development permitting.

A decision notice is now available at the Environmental Registry of Ontario, posting #019-2927: [Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario | Environmental Registry of Ontario](#).

Impacts to the City of Hamilton

While the changes primarily affect if a permit is, or is not, required from the applicable Conservation Authority, the City's Official Plan policies and zoning remain in force and effect. The primary impact is a shift from a joint City-Conservation Authority role in evaluating applications to a city only role as a result of removing the authority to regulate certain impacts of a development on watercourses and/or wetlands as well as the removal of lands from all Conservation Authorities' regulated area.

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Based on Official Plan mapping, polices and implementing zoning, the review and evaluation of development applications from a natural heritage perspective will remain the same. While the Conservation Authorities will primarily be concerned with hydrological impacts to wetlands under their new role, under the Provincial Policy Statement the City retains the authority to require an Environmental Impact Study for lands outside of the 30 metre distance/buffer from a wetland or provincially significant wetland. The requirement and review of these studies will ensure no-negative impact to features and functions from a development on adjacent lands. The City will maintain the discretion for requiring an Environmental Impact Study within the 120 metre buffer zone dependent on the surrounding context and existing conditions.

In Report PED22207, staff flagged the potential capacity implications that could result from Bill 23. At this time, there are two positions dedicated to the specialized expertise in ecology and natural heritage planning and three positions with expertise in infrastructure planning engineering. The most recent legislation reduces the role of the Conservation Authorities further within the development review process and places additional stress on current staffing resources. The increased review functions placed on City staff may result in the need for additional staffing resources in the Planning and Economic Development Department and possible processing delays due to resourcing.

Next steps

The Conservation Authorities will conduct an in-depth review of the regulated area mapping which may require an update. It is anticipated that there will be a reduction in the overall net regulated area as a result of the regulation area reduction from 120 metres to 30 metres around a wetland. In addition, Conservation Authority staff will update policies and procedure documents for intaking and reviewing development applications and issuing permits.

Through Phase 2 of the City's Municipal Comprehensive Review Planning staff will undertake a review of the Urban and Rural Hamilton Official Plan Natural Heritage System policies. Staff will assess the adjacent land distances, including Provincially Significant Wetlands, to provide clarity on when an Environmental Impact Statement will be required for a development application. Further, measures to ensure sub-watershed studies are scoped and reviewed to prevent negative impacts on water quality downstream from development will be included.

Staff will also be assessing if there will be the need for additional staffing resources to complete the additional review function and if there will be delays in reviewing/approving applications due to resourcing.

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Please contact Anita Fabac, Acting Director, Planning and Chief Planner with any questions or comments or to set up a meeting to discuss the update to the *Conservation Authorities Act* at Anita.Fabac@hamilton.ca or by phone at (905) 546-2424 Ext. 1258.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" - February 16, 2024, Communication from the Ministry of Natural Resources and Forestry

Appendix "B" - Hamilton Conservation and Conservation Authority Memos to the City of Hamilton Planning Directors, Chief Building Official and Public Works Directors

From: ca.office (MNRF) <ca.office@ontario.ca>

Sent: Friday, February 16, 2024 3:52 PM

To: ca.office (MNRF) <ca.office@ontario.ca>

Cc: Keyes, Jennifer (MNRF) <jennifer.keyes@ontario.ca>

Subject: Update: Regulation of Development for the Protection of People and Property from Natural Hazards in Ontario – Ministry of Natural Resources and Forestry and Extension of Minister's Fee Direction

This message is being sent on behalf of Jennifer Keyes, Director, Resources Planning and Development Policy Branch, MNRF

Good afternoon:

I am writing to inform you of recent updates under the *Conservation Authorities Act* (the act) regarding the regulation of development for the protection of people and property from natural hazards in Ontario. Amendments to the act that were made in recent years to update the conservation authorities permitting framework and associated regulations will come into effect on April 1, 2024. These changes will clarify and streamline regulatory requirements to focus on natural hazards and public safety and provide greater transparency in the permitting process.

Updated rules for the protection of people and property from natural hazards

Effective April 1, 2024, updated permitting related provisions of the act will come into effect, supported by a new Ontario Regulation (O. Reg.) 41/24: Prohibited Activities, Exemptions and Permits, which set out prohibited activities and areas where a conservation authority permit is required, exemptions for permits for certain low-risk activities, the process for applying for a conservation authority permit, and service requirements for conservation authorities in reviewing permit applications. The new rules will apply to all conservation authorities and replace the existing 36 conservation authority-specific regulations.

Key changes include:

1. Updating some definitions and areas where development activities are prohibited, while maintaining important provincial standards.
2. Requirements for mapping of regulated areas to be made available online and for public notification to be given of any changes.
3. Exemptions from the requirement for a conservation authority permit for some low-risk activities, subject to certain conditions, such as sheds, removable docks, garage rebuilds, fencing, and agricultural drainage.
4. Limiting the conditions that can be included on a permit to matters related to natural hazards and public safety and general permit administration.
5. Service standards for permit issuance including pre-consultation and confirmation of complete applications within 21-days and requiring annual reporting on permitting statistics including reporting on the level of conservation authority compliance with new regulatory requirements.

6. Enabling applicants to appeal to the Ontario Land Tribunal (OLT) if a permit decision is not made within 90-days and appeals of permitting fees charged by conservation authorities to the OLT.
7. Enabling Minister of Natural Resources and Forestry's tools regarding the review of permit decisions and the issuance of permits.
8. Updated enforcement powers and offence provisions under the act, including stop work orders and increased penalties.

A decision notice is now available at the Environmental Registry of Ontario, posting #019-2927: [Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario](#).

Minister's Fee Direction

I would also like to notify you that the Minister has extended his Direction (through the issuance of a new Direction) to conservation authorities to not change any fees charged as part of their programs and services associated with planning, development, and permitting. This extended direction is in effect as of January 1, 2024, until December 31, 2024.

If you have any questions, please reach out to the Ministry of Natural Resources and Forestry at ca.office@ontario.ca.

Sincerely,

Jennifer Keyes
Director, Resources Planning and Development Policy Branch
Ministry of Natural Resources and Forestry
ca.office@ontario.ca

Please Note: As part of providing [accessible customer service](#), please let me know if you have any accommodation needs or require communication supports or alternate formats.

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Memorandum

TO: City of Hamilton Planning Directors, Chief Building Official & Public Works Directors

FROM: Mike Stone, Acting Director, Watershed Management Services, Hamilton Conservation Authority (HCA)

DATE: March 15, 2024

RE: Legislative and Regulatory Changes Affecting HCA's Development Permitting (Effective April 1, 2024)

On February 16, 2024, a new Minister's regulation, *Ontario Regulation 41/24: Prohibited Activities, Exemptions and Permits*, under the *Conservation Authorities Act* (CA Act) was approved by the Province. This regulation takes effect April 1, 2024, and will replace all existing individual CA development regulations, including HCA's "*Development, Interference with Wetlands and Alterations to Shorelines and Watercourses*" regulation (O. Reg. 161/06). The enactment of O. Reg. 41/24 will also coincide with the proclamation of associated sections within the CA Act regarding the regulation of development.

Notwithstanding these changes, much of the development regulation process remains the same. HCA will continue to require permit applications for proposed development, interference and alteration activities in regulated areas as defined under the CA Act and O. Reg. 41/24. The administration of O. Reg. 41/24 is a required program of the HCA, as per Section 21.1.1 of the CA Act and *Ontario Regulation 686/21: Mandatory Programs and Services*.

Key Changes

While much of the CA development regulation process remains the same, there are a number of changes which may be of interest, including:

- The regulated area around wetlands will be consistent at 30 m, including around provincially significant wetlands (formerly 120 m).
- The definition of a (regulated) *watercourse* has been amended from ***an identifiable depression in the ground in which a flow of water regularly or continuously occurs to a defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs.***

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- Certain low-risk activities that meet specific size and/or location requirements will be exempt from requiring a permit. Attachment A outlines exempt activities, per section 5 of O. Reg. 41/24. (Note: applicants are encouraged to consult with HCA to confirm exemptions prior to undertaking work).
- The list of complete application requirements has been revised, and now includes fee submission and landowner authorization. No new technical studies can be requested once an application is deemed complete.
- CA permitting decisions are now focused on natural hazards, public health and safety and property damage. Consideration of *Conservation of Land* and *Pollution* 'tests' (i.e. natural heritage matters) have been removed.
- New administrative review and appeal mechanisms are available to permit applicants.

It is worth noting that the legislative and regulatory changes made did not enact, at this time, exemptions for activities authorized under the *Planning Act*.

Implementation & Transition

In order to support implementation of the legislative and regulatory changes taking effect April 1, 2024, HCA will be reviewing and updating mapping, policy, procedure and administrative documents and resources as required and on a priority basis. This will include updates to HCA's regulated mapping to reflect changes in wetland and watercourse limits, as well as review and update of policy and procedure documents for development review and permitting. HCA will keep the City apprised of these updates as they become available.

HCA is working to develop transitional procedures to assist staff in moving from the *Development, Interference with Wetlands and Alterations to Shorelines and Watercourses* regulation (O. Reg. 161/06) to the new *Prohibited Activities, Exemptions and Permits* regulation (O. Reg. 41/24). In general, it is expected that for permit applications submitted prior to the enactment of O. Reg. 41/24, the existing permitting process will be followed, and that new applications submitted on or after April 1, 2024 will follow the processes outlined under the new legislative and regulatory framework. HCA is committed to minimizing disruptions to the development permitting review and approvals process as we transition to the new regulatory environment.

Plan Review Services

There are no changes to HCA's planning services at this time. HCA continues to provide mandatory programs and services related to reviewing and commenting on applications and other matters under the *Planning Act*, and for proposals under various other Acts, as *Ontario Regulation 686/21: Mandatory Programs and Services*. The City should continue to circulate planning applications and other matters, including technical reports to CAs so that we may review and comment on natural hazards and wetland matters per O. Reg. 686/21.

Fee Schedule

There have been no changes to the fee provisions of the CA Act, and the attached fee schedule for 2024 meets the requirements of the Act for programs and services for which a CA may charge fees. Notwithstanding this, the Minister has issued a direction to freeze CA fees for planning and permitting for 2024. As a result, HCA has not increased fees from 2023 and the attached planning and permitting fee schedule will remain in effect for 2024 (Attachment B).

HCA appreciates the strong working relationship it has with the City and will continue to work to provide excellent client service. Please do not hesitate to contact the undersigned with any questions or concerns regarding these changes or the transition process.

Mike Stone, MCIP, RPP
Acting Director, Watershed Management Services
Hamilton Conservation Authority
(905) 525-2181, ext. 133
mike.stone@conservationhamilton.ca

MEMO

TO: Municipal Planning Directors & Chief Building Officials

FROM: Kellie McCormack, Director, Planning & Regulations
kmccormack@hrca.on.ca; 905.336.1158 ext. 2228

DATE: March 8, 2024

SUBJECT: Legislative and Regulatory Changes Affecting CH's Development Permitting (Effective April 1, 2024)

On February 16, 2024, a new Minister's regulation (*Ontario Regulation 41/24: Prohibited Activities, Exemptions and Permits*), under the *Conservation Authorities Act (CA Act)*, was approved by the Province. *O.Reg. 41/24* replaces Conservation Halton's (CH) existing "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulation (*O.Reg. 162/06*) and comes into effect on April 1, 2024. The enactment of *O.Reg. 41/24* coincides with the proclamation of associated sections within the *CA Act*.

While *O. Reg. 41/24* represents a single regulation for all Conservation Authorities (CAs), much of the CA regulatory process remains the same. **CH will continue to require permit applications for development, interference, and alteration activities in regulated areas, as defined under the CA Act and in O.Reg. 41/24.** The administration of *O. Reg. 41/24* is a Mandatory Program and Service of a CA, as per Section 21.1.1 of the *CA Act* and as stipulated in *O.Reg. 686/21: Mandatory Programs and Services*.

Key Legislative & Regulatory Changes (O.Reg. 41/24)

While many of CH's regulatory requirements and processes remains the same, some of the key changes that may be of interest include that:

- The regulatory allowance in CH's minor urban valley systems in Burlington and Oakville will increase from 7.5 metres from the hazard limit to 15 metres, as well as in select areas in CH's major valley systems where the regulatory allowance will increase to 15 metres (i.e., North Oakville East/West, Boyne, and Derry Green Secondary Plan Areas);
- The regulated area around Provincially Significant Wetlands and wetlands greater than 2 hectares will decrease from 120 metres from the limit of the wetland to 30 metres from the limit of all wetlands;
- Certain low-risk activities that meet specific requirements will no longer require permits (see Attachment One for further details; note: applicants are encouraged to confirm exceptions with CH prior to carrying out the work);



- CAs have prescribed timelines to deem an application complete (or incomplete) after receiving an application and associated fee (21 days) or to make a decision on a permit, once deemed complete (90 days); and
- New administrative review and appeal mechanisms are available to permit applicants.

Among other things, some of the key actions required to implement the CA Act-related changes include: 1) updates to CH's regulatory mapping with revised regulation limits; 2) updates to regulatory and legislative references on all applications, forms, website, templates, technical guidelines, maps, etc.; 3) re-delegation of permit approvals to senior staff; 4) re-appointment of Provincial Offences Officers; 5) conformity reviews/updates to CH's regulatory and land use policies; and 6) development of a procedures document.

Transition & Implementation

The transition period from the release of *O.Reg. 41/24* to when the changes come into effect is limited (April 1, 2024). As such, CH staff is prioritizing the items that need to be addressed immediately (e.g., mapping, application forms, notifications) and those that will need to be completed over the coming months (e.g., procedures document). CH's updated regulatory mapping will be posted for April 1, 2024 and our GIS department will send updated mapping to municipalities shortly thereafter. We are also working on a transition procedure for any permit applications or appeals submitted or underway prior to the new *CA Act* provisions and regulation coming into effect. We will keep our partners, stakeholders, and the public informed as we work to develop and update our implementation support materials and to ensure that disruptions to development approval processes are minimized.

Plan Review Services

There are no changes to CH's planning services at this time. **Municipalities must continue to circulate CH on *Planning Act* applications for CH to provide mandatory (Category 1) programs or services related to reviewing and commenting on natural hazard and wetland related matters, and for proposals under Acts referred to in Section 6 (2) of *O.Reg. 686/21*.**

We look forward to continuing to work with you and providing excellence in customer service. We will be in touch as we work to transition to this new legislative and regulatory framework.

If you have any questions or concerns, please feel free to contact the undersigned.

Kellie McCormack, MCIP, RPP
Director, Planning & Regulations
2596 Britannia Road West, Burlington, ON L7P 0G3
kmccormack@hrca.on.ca
905.336.1158 ext. 2228

Attachment One

Excerpt from [O. Reg. 41/24: Prohibited Activities, Exemptions and Permits](#) as of [DATE]

Note: Applicants are encouraged to confirm exceptions with the CA prior to carrying out the work.

5. Paragraph 2 of subsection 28 (1) of the Act does not apply to,
- (a) the construction, reconstruction, erection or placement of,
 - i. a seasonal or floating dock that,
 - A. is 10 square metres or less,
 - B. does not require permanent support structures, and
 - C. can be removed in the event of flooding,
 - ii. a rail, chain-link or panelled fence with a minimum of 75 millimetres of width between panels, that is not within a wetland or watercourse,
 - iii. agricultural in-field erosion control structures that are not within and that do not have any outlet of water directed or connected to a watercourse, wetland or river or stream valley,
 - iv. a non-habitable accessory building or structure that,
 - A. is incidental or subordinate to the principal building or structure,
 - B. is 15 square metres or less, and
 - C. is not within a wetland or watercourse, or
 - v. an unenclosed detached deck or patio that is 15 square metres or less, is not placed within a watercourse or wetland and does not utilize any method of cantilevering;
 - (b) the installation of new tile drains that are not within a wetland or watercourse, within 30 metres of a wetland or within 15 metres of a watercourse, and that have an outlet of water that is not directed or connected to a watercourse, wetland or river or stream valley, or the maintenance or repair of existing tile drains;
 - (c) the installation, maintenance or repair of a pond for watering livestock that is not connected to or within a watercourse or wetland, within 15 metres of a wetland or a watercourse, and where no excavated material is deposited within an area where subsection 28 (1) of the Act applies;
 - (d) the maintenance or repair of a driveway or private lane that is outside of a wetland or the maintenance or repair of a public road, provided that the driveway or road is not extended or widened and the elevation, bedding materials and existing culverts are not altered;
 - (e) the maintenance or repair of municipal drains as described in, and conducted in accordance with the mitigation requirements set out in the Drainage Act and the Conservation Authorities Act Protocol, approved by the Minister and available on a government of Ontario website, as it may be amended from time to time; and
 - (f) the reconstruction of a non-habitable garage with no basement, if the reconstruction does not exceed the existing footprint of the garage and does not allow for a change in the potential use of the garage to create a habitable space.