AMENDMENTS TO ONTARIO'S CONSERVATION AUTHORITIES ACT: EFFECTIVE APRIL 1, 2024

Categories: Insights, Publications

On April 1, 2024, significant amendments to the Conservation Authorities Act[1] (the “CA Act”) came into effect, including amendments to the jurisdiction of conservation authorities in Ontario (the “Amendments”). The Amendments include the revocation of a number of regulations which previously and separately governed each of the conservation authorities in Ontario,[2] and the introduction of a single, new regulation to replace those revoked: O. Reg. 41/24: Prohibited Activities, Exemptions and Permits (“O. Reg. 41/24”).[3]

The implementation of these Amendments to the CA Act has been long anticipated by stakeholders in the development industry. Initially introduced under Bill 139: the Building Better Communities and Conserving Watersheds Act and under Bill 23: the More Homes Built Faster Act, 2022[4] (“Bill 23”), which received Royal Assent in November of 2022, the Amendments form part of the Province's long-term strategy to simplify the development approvals process in an attempt to, in part, encourage construction of more housing.

Those with experience developing lands within the jurisdiction of one of Ontario’s 36 conservation authorities (each an “Authority”) will know that the process can involve the Authority in 2 main ways:

1. as a commenting agency on certain municipal approvals (e.g., site plan), which role continues,[5] and
2. as a permitting authority in its own right, regulating certain activities pursuant to the CA Act, which role has been curtailed.

In short, the Amendments function to reduce the extent of Authorities’ jurisdiction and clearly set out offences and enforcement mechanisms under the CA Act.[6]

The following are notable changes resultant from the Amendments and O. Reg. 41/24:

a) Regulations. Under the amended CA Act, Authorities are no longer empowered to make regulations in respect of lands other than those owned by the Authority.[7] This power now rests solely with the Minister of Natural Resources and Forestry (the “Minister”) and, in certain circumstances, the Lieutenant Governor in Council.

b) Reduction in Prohibited Activities Requiring Permits. Prohibited activities subject to a permit from an
Authority no longer include reference to the “conservation of land” and are now limited to:[8]

1. Activities to straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or to change or interfere in any way with a wetland.
2. Development activities in areas that are within the authority's area of jurisdiction and are,
   i. hazardous lands,
   ii. wetlands,
   iii. river or stream valleys the limits of which shall be determined in accordance with the regulations,
   iv. areas that are adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to an inland lake and that may be affected by flooding, erosion or dynamic beach hazards, such areas to be further determined or specified in accordance with the regulations, or
   v. other areas in which development should be prohibited or regulated, as may be determined by the regulations.

Prior to the Amendments, an Authority had the power to make regulations requiring permission of the Authority (i) to straighten, change, divert or interfere with an existing channel of a river, creek, stream, watercourse or wetland, and (ii) where it was the opinion of the Authority that the subject development would affect the control of flooding, erosion, dynamic beaches, or conservation of land.

c) New Exceptions. O. Reg. 41/24 specifically set out certain low-risk development activities as being exempt from requiring permission from the Authority (subject to specific conditions), including: small seasonal or floating docks, fences, erosion control structures, and non-habitable structures.[9]

More notably, the CA Act specifically exempts certain development activity from requiring a permit where it:

- is carried out (a) in an area that is within an Authority's area of jurisdiction and specified in the regulations; and (b) in accordance with any conditions specified in the regulations;[10] or
- (a) is part of development authorized under the Planning Act; and (b) satisfies such conditions and restrictions as may be prescribed for obtaining the exception and on carrying out the activity.[11]

d) Limiting the conditions an Authority may attach to a permit: O. Reg. 41/24 sets clear boundaries on the conditions Authorities can attach to permits to ensure that such conditions imposed are necessary and proportionate to the potential impacts of the permitted activity.[12] An Authority may only impose conditions:[13]

"if, in the opinion of the authority, the conditions,

(a) assist in preventing or mitigating any effects on the control of flooding, erosion, dynamic beaches or
unstable soil or bedrock;
(b) assist in preventing or mitigating any effects on human health or safety or any damage or destruction of property in the event of a natural hazard; or
(c) support the administration or implementation of the permit, including conditions related to reporting, notification, monitoring and compliance with the permit.

e) Definitions of “Development activity” and “Watercourse”. O. Reg 41/24 provides the following new definition of “watercourse”, being a “defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs”, and defines “Development Activity” as:[14]

“(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.”

f) Requirement for Mapping. O. Reg. 41/24 requires Authorities to develop maps depicting the areas within its jurisdiction, to be made publicly available on the Authority’s website, subject to annual review and updates if required.[15]

g) Smaller Restricted Area. O. Reg. 41/24 restricts development within 30 meters from wetlands (reduced from the previous limit of 120 meters).[16]

h) Process re: Permit Applications & Request for Review: O. Reg. 41/24 includes a list of permit application requirements, contemplates a pre-submission consultation, and adds a right for an applicant to request a review if the Authority has not sent a notice of “complete application” within 21 days of submission of all required information and payment of the fee.[17] The Authority must issue its decision on a review within 30 days.

i) Direct Appeal for Reconsideration of Fees for Permit Applications: If the Authority fails to render a decision on review within 30 days, an applicant can directly appeal this failure to make a decision to the Ontario Land Tribunal (“Tribunal”). The Tribunal is empowered to hear or dismiss appeals, adjust fees, order refunds or eliminate fees altogether.[18]
j) **Enhancing role of Lake Simcoe Region Conservation Authority (“LSRCA”):** The framework strengthens the role of the LSRCA in implementing the Lake Simcoe Protection Plan (the “LSP Plan”). Decisions made by LSRCA are now required to align with relevant policies in the LSP Plan. [19]

k) **Power shift to the Minister:** Under the amended CA Act, the Minister can now issue orders directing Authorities not to issue permits for specified activities or classes of activities, even if those activities would otherwise be permissible under existing regulations. The Minister now also has the authority to modify conditions imposed by an Authority on a permit, such as adjusting construction plans to improve water management or mandating regular reporting. [20]

l) **MZOs.** The Amendments generally maintain, with slight updates, the provisions of the CA Act relating to where a zoning order has been issued by the Minister (an “MZO”), including the requirement for the Authority to issue a permit, and to enter into an agreement with the applicant for compensation resulting from ecological impacts of the development. [21]

If you would like to discuss any of the foregoing or how it may apply to your project, please contact either of the authors, and our team would be pleased to with you.

[2] Revoked as of the day section 25 of Schedule 4 to the Building Better Communities and Conserving Watersheds Act, 2017 came into force (see: 2022, c. 21, Sched. 2, s. 16), being April 1, 2024.
[3] O. Reg. 41/24 came into force on the day subsection 25 (2) of Schedule 6 to the Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 came into force, being April 1, 2024.
[7] See repeal of s.28(1) of the CA Act.
[8] CA Act, s.28(1).
[10] CA Act, s.28(4).
[13] O. Reg. 41/24, s.9(1).
[14] O. Reg. 41/24, s.1(1).
[16] O. Reg. 41/24, s 2(3).
[17] O. Reg. 41/24, s.6, s.7, and s.8.
[21] CA Act, s 28.1.2.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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