

6c-1

| LEGISLATIVE SERVICES | |
|--------------------------------|---|
| COPY TO: | FOR: |
| Chair | <input checked="" type="checkbox"/> Committee |
| CAO | <input checked="" type="checkbox"/> |
| Corporate Services | <input checked="" type="checkbox"/> Council |
| Public Works | JAN 21/10 |
| Employee and Business Services | |
| Health Services | File |
| Human Services | |
| Peel Living | |



Friday, January 15, 2010

To: Regional Chair and Council, Region of Peel

Peel federation of Agriculture Comments on:

Credit Valley Conservation
WATERSHED PLANNING AND REGULATION POLICIES FINAL DRAFT November 2009 [97p.p.]

Purpose of PFA Comments:

The Peel Federation of Agriculture is concerned with the direction CVC is taking in its proposed planning and regulation policies which;

- ⇒ do not follow the original intent of the legislative provisions of the Conservation Authorities Act,
- ⇒ duplicate municipal jurisdiction under the Planning Act,
- ⇒ increase confusion in an already complex land use rule system,
- ⇒ increase costs to practically any scale of development,
- ⇒ increase the property tax burden on Peel landowners and
- ⇒ fail to address the need for practical conservation.

PFA Request: That Regional Council, as primary funding source of the CVC, investigate the PFA concerns and determine their validity.

CVC Program:

Section 20 of the Conservation Authorities Act outlines the object of the CAs as follows: "establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development, and management of natural resources other than gas, oil, coal and minerals." Pg. 11

PFA Concerns:

CVC has so many documents on various topics that it is impossible to determine what its program is for natural resources. The primary object of CVC must be readily available & clearly set out.

Natural Resources mean inputs to the economy such as timber, fish, soil, stone, water power, water for irrigation, etc. Somehow, 'natural heritage' features and systems have been substituted for economic inputs without any legislative direction under the

REFERRAL TO CORPORATE SERVICES
RECOMMENDED _____
DIRECTION REQUIRED _____
RECEIPT RECOMMENDED _____

Conservation Authorities Act. CVC is not adhering to the Section 20 Objects of the Conservation Authorities Act.

Powers of a Conservation Authority:

"To acquire, by purchase, lease or otherwise and to expropriate any land that it may require...;" Pg. 12

PFA Concerns:

CVC and other Conservation Authorities have a practice of demanding private lands they deem 'environmental' in some way, without compensation as a condition of development. The O.M.B. [Decision: PL051147] stated, "Lastly, the Board is not persuaded there is any rationale either based on the facts, or in law, to require those portions of the site designated as EP to be placed in public ownership by order of the Board. While this may be the goal of the TRCA and the Town, neither sought to purchase the site when it became available from Ontario Hydro nor was there evidence to suggest that those portions of the land will receive superior attention following the EP designation if they were transferred by the Board to public ownership."

The CVC and other Conservation Authorities are operating ultra vires when they demand land as a condition of development approval.

CVC's Role in Planning Matters:

"The Ministry of Natural Resources (MNR), Ministry of Municipal Affairs and Housing (MMAH) and Conservation Ontario (CO) have a memorandum of understanding (MOU) defining the roles and relationships for implementing delegated responsibilities under the Provincial One Window Planning System." [pg.13]

PFA Concerns:

The MoU was signed by a Mr. Hunter, General Manager of Conservation Ontario. Conservation Ontario was incorporated as a "not for profit" organization, #2002796 Ontario Limited, on May 1, 2001 with the 36 Conservation Authorities named as shareholders each with 10 common shares @ \$1.00 per share.

There is no legislative authority under the Conservation Authorities Act to provide for some other body than the Board of a Conservation Authority to make legal commitments. By contrast the Department of Fisheries & Oceans has signed individual MoU's with each of the Conservation Authorities and authorized by each Board.

In any case, the MoU is very specific in only referring to P.P.S. Section 3.1 Natural Hazards, as an area where Conservation Authorities represent the 'Provincial Interest', where the Province is not involved. There is no reference to Natural Heritage.

A third concern with Conservation Ontario involvement in public policy formation and implementation is the secrecy available to corporations operating outside of the public eye. Public business should be public business. Open and traceable decisions are carefully protected under the Municipal Act and Planning Act for all municipalities but there seems to be no comparable protection under the Conservation Authorities Act.

Fourthly, approximately two thirds of Conservation Ontario's budget is public money with no accounting of how, where and why it is being spent. These monies flow from the local property tax base through CVC, for example, to Conservation Ontario.

Fifthly, there are no Provincial funds to compensate municipal property tax payers for the provision of Provincial Interest in Natural Hazard implementation.

Planning Advisory Services to Municipalities:

"The provision of planning advisory services to municipalities is implemented through a service agreement (or memorandum of understanding) with participating municipalities..."

The PFA is concerned that municipal staff confuse the provision of technical planning advice provided under an MoU with decision making authority under the Planning Act. This confusion effectively fetters municipal discretion.

Regulatory Responsibilities:

"...CAs often enter into agreements to transfer regulatory/approval responsibilities to individual CAs." [pg.14]

PFA Concerns:

The PFA does not understand this statement. Does this mean the CVC could or would transfer regulatory/approval authority to say, the Grand River Conservation Authority or the Raisin River Conservation Authority?

"CVC has entered into a Level II agreement with Fisheries and Oceans Canada (DFO) to review projects under Section 35(1) of the Fisheries Act." [pg.14]

PFA Concerns:

The CVC may be the most appropriate agency to provide screening of major development applications in the Watershed however it can not become a decision maker under the Fisheries Act via an MoU and secondly there must be compensation to the property tax payer for the costs of these services to the Federal Government.

Goals: [pg. 15]

PFA Concerns:

CVC lists five topic areas as goals none of which address the Section 20 Objects of *"establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development, and management of natural resources other than gas, oil, coal and minerals."*

"Water Quantity – To manage the hydrological systems of the watersheds in a manner that emulates natural processes while recognizing human needs" [pg.15]

PFA Concerns:

The PFA is concerned with the goal of managing hydrologic systems. Managing means the active intervention and control of a process. In this case CVC is claiming to take responsibility for and be accountable for all precipitation, all runoff, all ground water, and all stream base flows in streams, anything associated with natural and man-made hydrologic systems. We do not understand how this may be accomplished on a watershed scale and secondly are concerned with the liabilities associated with such a far reaching goal.

"Terrestrial and Aquatic Species, Communities and Ecosystems – To protect, restore and enhance the ecological integrity of the natural areas, features and systems within CVC's jurisdiction;" [pg.15]

PFA Concerns:

Integrity is a vague term, impossible to pin down in chaotic, indeterminate systems characteristic of nature. The use of term integrity as a goal to be achieved is problematic for an agency to use as integrity can never be determined.

The PFA advocates the adoption of the Ecosystem Approach to watershed decision making which incorporates a balanced consideration of environmental, economic and cultural aspects in natural resource decision making. The 3 leg stool metaphor is useful as no leg can be missed without destabilizing the other two. Current environmental management thinking represents a distortion where the environmental leg is given primacy over both social and economic legs. We note the CVC document under Objective C. c. *Terrestrial and Aquatic Species, Communities and Ecosystems*; "Promote integrated ecosystem management of aquatic and terrestrial systems and areas within the watershed for plant, animal and human needs". [pg.16] is an objective. The PFA prefer this to be an overall implementation objective of the CVC natural resource Program and its land use planning advice to municipalities.

Objectives:

Water Quality and Water Quantity [pg.15-16]

PFA Concerns:

These two phenomena are under Ministry of Environment jurisdiction. Pollution and water taking are subject to permits based on scientific study. CVC's participation and expanded jurisdiction is a duplication of work and adds confusion to who is the decision maker. In addition, there are added costs to the property taxpayer involved in this duplication.

Terrestrial and Aquatic Species, Communities and Ecosystems: precautionary principle [pg.17]

PFA Concerns:

In addition to our comments above under Goals the PFA is concerned with CVC's staff practice of treating very trivial environmental changes, small site grading and removal of a few early successional trees, as a basis for prohibiting small scale development related to the ordinary use and enjoyment of lands. This matter becomes important when the precautionary principle is cited [pg. 17] under Principles: "*Where there is uncertainty, risk or irreversibility we are cautious and will err on the side of protecting the environment*". The PFA has no idea of how irreversibility can be determined. At a site scale? At the watershed scale? The PFA has learned there is resilience in nature. For example the Forks of the Credit area was heavily industrialized at 1900 and denuded of forest cover but is now viewed as a significant woodland and wild life habitat area.

Social & Economic factors: [pg.15]

PFA Concerns:

There is no reference to natural resources, the core object of the CVC, under this heading.

Principles:

"Promote ecologically sustainable development designs, practices, lifestyles and behaviour within urban and rural communities" [pg.17]

PFA Concerns:

The PFA does not understand how this very broad principle relates to the Section 20 Objective natural resources or any other provision of the Conservation Authorities Act.

4.1 Watershed Planning, 4.2 Natural Heritage Systems, and 4.3A Natural Heritage Systems Approach to Watershed Planning [pp. 19-20]**PFA Concerns:**

These three initiatives represent a major, self declared, expansion of CVC's mandate into land use control, unsupported by any reference to the Conservation Authorities Act and will become a source of increased cost, duplication, and confusion with municipal responsibilities under the Planning Act. Under 5.1.2 "*CVC will encourage efficient land use and development patterns, including intensification and redevelopment that allows for the efficient use of land, infrastructure and public services...*" [pg. 23] These are clearly municipal areas of jurisdiction and are probably MNR jurisdiction also.

5.3.3.3 Areas of Natural and Scientific Interest (ANSIs) – Life Science: [pg.29]

- a) *The exact limits of life science ANSIs are to be determined by the Ministry of Natural Resources.*
- b) *CVC will not support planning approvals for development (2) and site alteration within provincial and regional life science ANSIs, except where allowed under the policies in Chapters 6.*
- c) *CVC will not permit development (1) within provincial and regional life science ANSIs in regulated areas, except where allowed under the policies in Chapter 7.*

PFA Concerns:

There are no references to the legislative authority for the CVC to not support and not permit. The language indicates a closed mind. The PFA once again expresses concern that MNR has not been required to notify affected landowners of an ANSI study area, or that one may have been approved on privately owned lands. The MNR must be required to act as the proponent of Official Plan Amendments for ANSI's in order to provide fairness in the land use planning process. Finally ANSI's are already covered under the Planning Act through the P.P.S. CVC's involvement represents an additional duplication of municipal Planning Act responsibilities.

Conservation of Land: "means the protection, management or restoration of lands within the *watershed* ecosystem for the purpose of maintaining or enhancing the *natural heritage system*, and *ecological functions* and *hydrologic functions*, within the *watershed*. (CO, 2008)" [pg72]

PFA Concerns:

The CVC proposed definition of conservation of land again emphasizes their attempt to shift away from the Section 20 Objects focusing on natural resources to areas of municipal jurisdiction under the Planning Act. A natural resources definition of conservation of land would address soil erosion, soil stability and fertility and associated natural hazards and not references to natural heritage. In addition, the PFA regards the Conservation Ontario definition as a self serving opinion not a fact.

Appeal Forum:

Appeals of Conservation Authority decisions must be through the Mining and Lands Commissioner, not the O.M.B.

High Technical Evidence Standards: An appeal to the Lands and Mines Commissioner must be accompanied with sufficient technical, expert information; *"Primarily, one needs an engineer specializing in hydrology, hydraulics and watershed management. Knowledge of the movement of water, surface and ground water, recharge and discharge capacities and functions, stable slope engineering and soil properties may also be relevant. Knowledge of construction engineering to withstand hydrostatic pressures generated by flood waters, if flood waters are going to be involved, is absolutely necessary. Then, there may also be involved a coterie of biologists, or one generalist. There are several categories of relevance to the necessary determinations found in the legislation. Your biologist may require knowledge of wetlands ecosystems, hydrophytic plants and soils [that is waterlogged] endangered species, indigenous flora and fauna and ecosystems in general. The ability to critique and assess an existing wetlands evaluation according to either the Southern or Northern Ontario Wetlands Evaluation would be of assistance in cases where a provincially significant wetland designation is being applied."* [From Linda M. Kamerman Mining and Lands Commissioner, Edited Speaking Notes for Speech to UDI March 20th, 2002]

PFA Concerns:

PFA prefers Conservation Authority appeal be dealt with by the OMB and not the Mining and Lands Commissioner in order to simplify the approvals process and increase efficiency when all matters of land use and technical conservation and natural hazards may be heard and integrated at the same time.

Fees for Permits and 'Commenting':

PFA Concerns:

The trend has been to label all CVC permits and 'comments' on development applications as a service, which must be charged out to the applicant. The costs of these 'services', already high, will escalate dramatically as the CVC demands more supporting studies from applicants and also adds on the costs of their own massive information systems and associated staff as overhead. Projects associated with the normal use and enjoyment of agricultural lands, such as new barns or irrigation ponds, may become uneconomic when the costs of studies, permits and 'commenting' letters are included. Either projects will be abandoned or non-compliance will increase as a result. Agriculture must evolve and adapt in a cost effective way, in order to survive.