

ECO believes that this is an unreasonable delay. MNR's delay on this application seriously undermines the basic purposes of accountability and transparency found in the *EBR*.

In its February 2007, response to the applicants, MNR relied heavily on its unreleased Caribou Conservation Framework to allay any possible concerns about the vulnerability of this species and its habitat. MNR told the applicants and the ECO that this framework would be released in the fall of 2007; this framework is now targeted for release in June 2009. The ministry also has committed to regulating the habitat of the forest-dwelling population of woodland caribou under the *ESA* by June 2009. Further, MNR has targeted the fall of 2009 to release its new Forest Management Guide for Boreal Landscapes that will apply to the habitat of woodland caribou. The ECO will review the framework, habitat regulation, and forest management guide in a future Annual Report.

Review of Applications R2009001, R2009002, R2009003, R2009004:

5.4.2 Need to Legislate Development and Mineral Exploration in Uranium Zones (Review Denied by MNDMF, MMAH, MNR, and MOE)

This application was reviewed in conjunction with R2009001 (MNDMF), R2009002 (MMAH) and R2009004 (MOE). Please see the Ministry of Northern Development, Mines and Forestry portion of this Section for the full review.

Review of Application R2009005:

5.4.3 Request for Amendments to the *Conservation Authorities Act* and a Review of the Adequacy of Provincial Transfer Payments to Conservation Authorities (Review Denied by MNR)

Background/Summary of Issues

Since the establishment of the first Conservation Authority (CA) in Ontario in 1946, these watershed-based agencies have evolved to do more than just regulate development in natural hazards such as flooding and erosion prone areas. Many CAs also plant trees, secure land for natural area protection, restore and rehabilitate streams and wetlands and educate local communities on the importance of healthy ecosystems.

When the province significantly cut funding to CAs in the 1990s, the authorities began to charge fees (e.g., development applications and entrance to conservation areas) and accept donations to stay afloat. In May 2009, the ECO received an application for review asserting that it is a conflict of interest for CAs to accept donations from developers and other organizations that have a vested interest in expanding or intensifying the development of lands under the purview of the CAs. The applicants requested: a provision in the *Conservation Authorities Act* (CAA) to regulate private donations to CAs in order to prevent conflicts of interest from occurring; and a review of the adequacy of provincial transfer payments to CAs under section 39 of the CAA.

Conflict of Interest/ Conservation Authority Permits

CAs are created under the CAA and the objectives of a CA are to "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.” Each CA is governed by a Board of Directors whose members are appointed by municipalities located within the CA’s watershed.

Each CA has an individual regulation under section 28 of the CAA and in 1998 the Act was amended to ensure that the regulations would become consistent across the province. Ontario Regulation 97/04 under the CAA outlines the content required for these individual regulations (the ECO reported on O. Reg. 97/04 in the Supplement to our 2005/2006 Annual Report).

CAs regulate development and activities in or adjacent to river or stream valleys, Great Lakes and large inland lakes shorelines, watercourses, hazardous lands and wetlands. Permission for development may be required from a CA to confirm that the control of flooding, erosion, dynamic beaches, pollution or the conservation of land is not affected. CAs also regulate the straightening, changing, diverting or interfering with an existing channel of a river, creek, stream, watercourse or for changing or interfering with a wetland. The ECO noted in our 2006/2007 Annual Report that CAs are not consistently regulating wetlands across the province because of a lack of resources or a lack of political will.

The CA Board of Directors is responsible for approving (or denying) all permit applications under the CAA. Board decisions are guided by (Board approved) policies and procedures for administering its regulation. An applicant can request a CA hearing under CAA to object to a permit refusal or conditions of a permit. An applicant also has the ability to appeal the CAs decision to the Office of the Mining and Lands Commissioner. The CAA does not have a provision for third parties to appeal permits. In addition, these permits are not prescribed as instruments under the EBR and therefore not required to be posted on the Registry for public input.

CAs accept private donations to conduct a variety of local environmental projects. For example, donations have been used to build and maintain nature trails, plant trees, conduct biodiversity monitoring and research, rehabilitate gravel pits, and acquire greenspace land. Many CAs have established foundations, which are registered as charitable agencies, to handle donations and fundraising. While the CAA speaks to the receiving of grants from the Minister of Natural Resources, it does not address the accepting of donations from third parties.

In some cases, donations come from organizations, such as real estate developers, construction companies, and energy and resource companies, with a vested interest in expanding or intensifying the development of lands. The applicants reasoned that by accepting donations, the objectives of the CA (as defined in the CAA) are compromised, creating a conflict of interest.

The applicants provided an example of a potential conflict of interest in which a developer, interested in building a subdivision in and around the provincially significant Leitrim wetland near Ottawa, committed to donating land and money to the South Nation River Conservation Authority (SNC). The applicants alleged that the CA failed to properly administer its regulation (O. Reg. 170/06 under the CAA) because it received donations from the developer. SNC does not have an established foundation or associated charitable organization to handle its donations. Despite the developer’s commitment, the land has not yet been transferred to the CA.

The applicants argued that because similar conflicts of interest could be occurring throughout the province, the Ministry of Natural Resources (MNR) should establish a provision in the CAA that clearly regulates private donations to CAs. In addition to this application for review, the applicants also submitted an application for investigation related to this example; for more information, please see Section 6.2.3 of this Supplement.

The applicants requested that MNR consider its Statement of Environmental Values (SEV) when considering the application. The applicants stated that by accepting private donations, CAs are pressured to “subordinate their watershed conservation, restoration, and management responsibilities to the interests of economic development.” The applicants claim that this poses a serious risk of harm to the environment and is therefore incompatible with MNR’s SEV.

Provincial Underfunding of Conservation Authorities

Under section 39 of the CAA, MNR provides an annual operating cost transfer payment grant to each of the CAs for provincially mandated activities. In 1992, MNR provided CAs with approximately \$59 million per year total as transfer payments for flood and erosion control activities. During the late 1990s, MNR reduced the amount provided, stating that it would no longer fund certain activities (i.e., construction of flood and erosion control works, municipal plan review for natural hazards, implementation and enforcement of section 28 regulations and shoreline management activities). The applicants stated that CAs responded to the funding reduction by “cutting back programs, seeking increased municipal funding and maximizing self-generated revenue.” For the past decade, the total amount allocated by MNR amongst Ontario’s 36 CAs has remained stagnant at approximately \$7.6 million per year.

The types of projects eligible for funding are outlined in MNR’s Policies and Procedures for Determining Eligibility for Provincial Grant Funding to Conservation Authorities (1997), a chapter in the CAs Policies and Procedure Manual (1997). This document states that MNR would fund 50 per cent of the cost of eligible projects. Eligible projects include:

- Operation of Flood and Erosion Control Structures;
- Routine/Minor Maintenance of Flood and Erosion Control Structures;
- Preventative Maintenance of Flood and Erosion Control Structures;
- Flood Forecasting and Warning;
- Ice Management;
- Plan Input;
- Information;
- Legal Costs; and
- Administration.

Historically, MNR and municipalities would jointly fund the cost of these eligible projects – MNR through the transfer payment grants and municipalities through levies. When MNR cut the amount provided to CAs in the late 1990s, the amount provided by municipalities increased as did self generated revenues (e.g., fees for municipal plan input and review, land rentals and conservation area gate fees).

Conservation Ontario, the network for all 36 CAs, examined CA audited financial statements from 2002 to determine MNR’s funding shortfall in its report, *Now and in the Future* (2004). Given MNR’s commitment to fund 50 per cent of eligible projects, Conservation Ontario found that MNR should have provided CAs with \$16 million because the total cost of eligible projects was approximately \$33 million. Since MNR only provided \$7.6 million to CAs as transfer payments in 2002, Conservation Ontario estimated that MNR’s funding shortfall was over \$9 million. Conservation Ontario requested that MNR provide:

- 1) fair, equitable and sustainable funding for those basic operational activities defined to be eligible for provincial transfer payment in accordance with its own policies;
- 2) re-instatement of funding to some activities that were specifically excluded in 1997; and
- 3) an annual Consumer Price Index adjustment to funding.

In 2007, Conservation Ontario re-estimated the shortfall to be \$14.3 million, based on the same criteria as the 2002 assessment, and stated that “[a]t the current funding levels in Ontario, our collective ability to protect lives and property from natural hazards is diminishing.”

The applicants requested that the province review the level of funding provided to CAs through transfer payments under section 39 of the CAA because insufficient funding is linked to the potential conflict of interest created by accepting private donations. As part of the application for review, the applicants submitted a copy of the report, *Now and in the Future*, to MNR. The applicants argued that MNR’s decision to keep transfer payments below historic levels has significantly contributed to the conflict of interest described above and is therefore incompatible with the ministry’s SEV.

Ministry Response

In July 2009, MNR denied this application for review. MNR stated that a review for the need of a provision in the CAA to regulate private donations is unwarranted because:

- the application does not provide sufficient evidence to support the claim that the mandate of CAs is compromised through the acceptance of donations and that conflicts of interest have occurred;
- the CA application and decision making process under the CAA for permitting of development and development related activities is open, transparent and demonstrates impartiality and is based on policies guided by provincial guidelines; and
- MNR ensures its acts and policies, including the CAA and policies and guidelines related to the act, are regularly reviewed and updated.

MNR stated that a review of the adequacy of funding provided to CAs is unwarranted because:

- MNR provides an annual operating cost transfer payment grant to each of the 36 CAs for specific provincially mandated activities related to public safety and emergency management and not for a broad mandate of activities;
- CAs can secure funding from other sources such as municipal special levies to carry out additional programs under their broad mandate; and
- As additional funding will not be reasonably available in the foreseeable future, there is no reasonable prospect that the CA operating cost transfer payment will be increased.

MNR stated that additional funding is provided to CAs, including \$5 million annually under the Water and Erosion Control Infrastructure (WEI) Capital Program for repairs and studies on existing CA owned dams, dykes and flood and erosion control works. It also highlighted that in 2008/2009, \$16.8 million was provided through a separate transfer payment to CAs for source water protection under the *Clean Water Act, 2006*.

Other Information

The ECO described flood prevention and mitigation measures in Ontario in our 2006/2007 Annual Report. The ECO reported that about one-quarter of Ontario's dams are more than 50 years old and in need of maintenance and repair. The ECO also noted that "CAs are struggling to prohibit development and site alteration in flood prone areas." Moreover, aging and/or inadequate flood control structures and insufficient funding for flood management activities are "increasing the risk that future rainfall events will overwhelm existing flood prevention and mitigation measures" in Ontario. Since climate change may bring more frequent and intense rainfall events, the ECO noted that "bold pro-active steps are required to reduce the risk of significant flooding." The ECO urged the Ministry of the Environment, MNR and the Ministry of Municipal Affairs and Housing to update current flood hazard regulations, policies and guidelines so that infrastructure and development will be able to handle or withstand projected flood events from climate change.

In November 2009, MNR posted a proposal on the Environmental Registry (#010-8243) for a new chapter in the CA Policies and Procedures manual. The proposed chapter "Policies and Procedures for Conservation Authority Plan Review and Permitting Activities" outlines "the roles of CAs in the areas of municipal planning, plan review, and permitting related to development activity and the protection of environmental interests." It includes new policies related to applicant pre-consultation, complete application requirements, timelines associated with permit decision-making, and permit appeals processes. The ECO may review this decision in our 2010/2011 Annual Report.

ECO Comment

The ECO believes that MNR's decision not to review the need for a provision in the CAA to regulate private donations, was reasonable. Although some CAs accept donations from organizations with an interest in land development projects, the ECO is not aware of evidence to support allegations that

conflicts of interest are occurring province-wide. The applicants alleged one instance of a potential conflict of interest from the acceptance of third party donations. The ECO notes that CAs also accept donations from the general public, environmental foundations and community service groups.

Donations provided to CAs, either in the form of land or money, enable valuable environmental projects to be completed on the ground, such as planting trees and teaching children about healthy ecosystems and biodiversity. Some CAs have established foundations, separate from the CA, to manage donations and fundraising. Foundations work in partnership with the CA, municipalities and other partners to implement environmental projects. The ECO suggests that MNR should consider this model for all CAs to better ensure a transparent process for receiving donations from third parties.

Upon review of this application, it became clear to the ECO that the issuance of CA permits is not an open process for third parties. Applicants are able to appeal decisions made by the CA regarding permits issued under Section 28 of the CAA but there is no third party appeal process. This is important because CA permits are not prescribed as instruments under the EBR and therefore not required to be posted on the Registry for public input. Currently, the public has limited, if any ability to participate in the issuance of CAA permits. It is at the discretion of the CA board to allow public delegations to the board before a permit decision is made. Environmental organizations have recommended MNR amend the CA board structure to include representation from non-municipal members, such as environmental organizations or the public, in order to participate in the review of permit applications. The ECO is not sure this is the best solution but suggests, at the least, MNR consider prescribing CA permits as instruments under the EBR,

The ECO believes that MNR's decision not to review the adequacy of funding provided to CAs as transfer payments under section 39 of the CA Act was not reasonable. The total amount MNR provides to CAs on an annual basis, \$7.6 million, has not changed in over a decade. Why would MNR not take this opportunity to review whether or not the amount provided to CAs is still enough? The applicants provided MNR with a copy of a Conservation Ontario report that identified a rather large shortfall (\$9 million) in transfer payment funding to CAs. Also, Conservation Ontario has identified to the province that the current level of funding is "diminishing" the CAs' ability to protect lives and property from natural hazards.

The ECO acknowledges that MNR provides certain earmarked additional funding to CAs, such as funding for source water protection under the *Clean Water Act*. The ECO notes, however that money provided to CAs for source water protection cannot be used to cover the cost of flood and erosion control activities. Furthermore, MNR's conclusion that a review is not warranted because CAs could get additional funding from municipal special levies for broad mandate activities is somewhat irrelevant; the application for review does not ask MNR to review funding for CAs' broad mandate activities, but the funding provided under section 39 of the CAA for specific flood and erosion control activities, as defined by MNR policy.

In Ontario, climate change will bring more extreme weather events (e.g., an increase in the intensity, frequency and duration of rain) and with it a greater risk of flooding and erosion. The ECO has previously expressed concern that inadequate funding for flood control and prevention measures has created a situation where, due to climate change, Ontario is now vulnerable to significant flooding events. With this in mind, the ECO believes that the MNR should have conducted a thorough review of the amount provided to CAs as transfer payments for flood and erosion control activities.
