

COUNCIL

November 17, 2020

Report #PD-2020-40
Noelle Reeve, Planner

BILL 229 SCHEDULE 6 – CHANGES TO CONSERVATION AUTHORITIES ACT

STAFF RECOMMENDATION

It is recommended:

“**THAT**, Tay Valley Township request that Schedule 6 be removed from the Budget Bill 229 and that public consultation be undertaken on the proposed changes to the *Conservation Authorities Act* and the *Planning Act* as they have the potential to undermine good land use planning, and download costs to municipalities and applicants.”

BACKGROUND

On November 5, 2019, the provincial government introduced its Budget Bill. Inside the Budget Bill, Schedule 6 proposes changes to Conservation Authorities via amendments to the *Conservation Authorities Act* and the *Planning Act*. There is no public comment period provided as none accompanies the Budget Bill. The Bill receives 2nd reading this week and is expected to be adopted shortly.

Regulations would then be proposed for comment with municipalities and the Conservation Authorities expected to develop a Memorandum of Understanding detailing provision of services and associated costs for their 2022 budgets. In other words, a very short timeframe is being proposed to re-negotiate the service delivery between Conservation Authorities and municipalities.

Schedule 6 proposes amendments to the *Conservation Authorities Act* and *Planning Act* in four areas (see attachment 1 by RVCA): members and boards; programs and services; budgets, fees and levies; planning and permitting.

Conservation Authorities will continue to provide services in four core areas:

- natural hazard protection and management – floodplains and steep slopes,
- conservation and management of lands owned by conservation authorities,
- drinking water source protection, and

- protection of the Lake Simcoe watershed.

All other services currently provided will either have to be negotiated with the conservation authority or provided by private contractors.

Perhaps of most concern is the shift away from a watershed approach to land use planning. This watershed approach was developed to ensure the functioning of whole ecosystems was considered in development and conservation decisions. A return to the fragmented approach of decision-making based on municipal boundaries is a major step backward.

Also of concern is the politicization of the issuance of Section 28 permits. The Minister will now be able to order the Conservation Authority (CA) to issue or not issue a permit.

In addition, the proposal overturns provisional changes the government presented in 2019 including:

- establish a transition period (e.g. 18 to 24 months) and process for conservation authorities and municipalities to enter into agreements for the delivery of non-mandatory programs and services and meet these transparency standards – less than 12 months is being provided;
- clarify that the duty of conservation authority board members is to act in the best interest of the conservation authority, similar to not-for profit organizations – this duty has not been revoked and municipal representatives are to consider their duty to be to the municipality.

DISCUSSION

Conservation Authorities were created in 1946 on a watershed basis to address concerns about degradation of water quality. Following the devastating floods of Hurricane Hazel in 1954, controlling the flow of water for flood management and pollution control was added to their responsibilities.

The Planner has serious concerns about the proposed restrictions on CA's mandates related to conservation and management of lands outside of those owned by CAs. The Planner relies on information provided by the RVCA and MVCA for *Planning Act* applications with respect to storm water management, subdivision hydrogeological reviews, shoreline disturbance, etc.

Watershed planning is enshrined in the Provincial Policy Statement for good reason. The PPS requires that, "Planning authorities shall protect, improve or restore the quality and quantity of water by using the watershed as the ecologically meaningful scale for integrated and long-term planning".

Natural ecosystems do not reflect municipal boundaries. A reversion to a time in land use planning where watershed planning is not undertaken will undermine the ability of natural systems to provide the benefits they do to Tay Valley residents – flood reduction, drought reduction, high levels of biodiversity, etc. Our residents' quality of life will be degraded as a result.

Because water flows downstream, floodplains can only be managed by having an understanding of development upstream in the watershed so that proposals that may impact water runoff can be mitigated to prevent an increase in floodplain size. Similarly a watershed approach is needed to ensure water supply is met in times of drought by protecting groundwater recharge areas.

Flooding is also managed by maintaining enough healthy natural resources in watersheds to absorb heavier rains and snow-melts that are now more frequent and severe, and forecast to worsen with climate change. Currently CAs provide valuable data to planners on this and other parameters of watersheds through their sub-watershed reports. If these are no longer part of the core mandate this would create a significant data gap for planners and others.

The Ministry of Environment in its webinar today responded to questions about the narrowing of the scope of CA services by emphasizing that CAs will continue to address hazards – flooding and steep slopes. That is not a good enough response. There are many more functional attributes to watersheds than floodplains and steep slopes that CAs have provided information on to assist with land use planning e.g., information on headwaters; lake water quality; mitigation of climate change impacts on lakes and rivers, etc.

Because the province will not provide funding for these non-mandatory services, the municipality will be required to pay the CAs more or use private sector consultants. The higher cost of these services will be passed onto applicants disadvantaging individual residents compared to larger corporations.

Lake Simcoe is a badly degraded watershed. The Planner is concerned that planning to *prevent* degradation may be set aside in favour of crisis management which is more difficult and costly than preventative planning. Tay Valley Township watersheds need protection before they degrade as badly as the Lake Simcoe watershed has.

Finally, the Planner is concerned that by removing the CA from a public body under the *Planning Act*, for the purposes of independently undertaking appeals the CA has been weakened. In addition the new appeal process will now be made to the LPAT not the Mining and Lands Tribunal which may delay decisions.

MVCA has proposed a resolution for Municipalities to consider passing in response to Schedule 6 (see Attachment 2).

FINANCIAL CONSIDERATIONS

Conservation Authority costs formerly provided by the province or shared among municipalities will be downloaded to municipalities and residents who propose development.

OPTIONS

Option #1 – (recommended) Provide comments on Schedule 6 that express concern with its potential to undermine good land use planning and download costs to municipalities and applicants.

Option #2 – Do not comment.

CONCLUSION

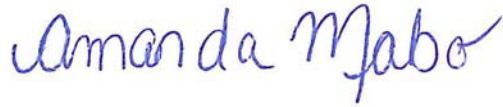
Council has the opportunity to comment on the proposed changes to the *Conservation Authorities Act* and *Planning Act* that may have a negative impact on land use planning and cost the municipality and its residents more money, if they choose to direct staff to do so.

ATTACHMENTS

- i) RVCA Chart
- ii) MVCA Resolution

Prepared and Submitted By:

Approved for Submission By:



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ATTACHMENT 1 - RVCA ANALYSIS OF PROPOSED SCHEDULE 6

Programs and Services

Description of Key Amendments	Background and Municipal Considerations
<ul style="list-style-type: none"> • CAs must provide mandatory programs and services related to: <ul style="list-style-type: none"> ○ The risk of natural hazards ○ The conservation and management of lands owned by the CA ○ Duties under the <i>Clean Water Act</i> • CAs may also enter into agreements with municipalities to provide programs and services on behalf of the municipality (e.g. septic approval, septic re-inspection, land management). <ul style="list-style-type: none"> ○ Through regulation, the province could prescribe program standards and requirements, or prescribe or limit the types of programs a CA can provide to a municipality • CAs may also provide other programs and services as it determines advisable to further the conservation, restoration, development and management of natural resources. <ul style="list-style-type: none"> ○ CAs must enter into agreements with participating municipalities for any such program that is supported by municipal levy ○ Each CA must prepare a transition plan for entering into these agreements (MECP has indicated that this change should be implemented in 2022 budgets meaning all agreements would need to be prepared, reviewed and signed by next summer). 	<ul style="list-style-type: none"> • CAs currently deliver the programs and services identified as mandatory • Currently, CAs can also enter into agreements with member municipalities to provide programs and services on their behalf. CAs typically offer programs and services to municipalities that leverages capacity or specialized skills or knowledge within the CA. This achieves local efficiencies and cost-savings and avoids duplication. If the province limited the types of programs CAs can offer to municipalities, municipalities may not be able to take advantage of expertise within their local CA and may have to find other service providers or develop their own capacity. • Currently, municipally-appointed CA Boards make decisions about what other programs and services their CA will deliver to further the conservation, restoration, development and management of natural resources. Typically, decisions are science-based within the funding envelop set by local municipalities and other revenue sources. These programs focus on improving the condition and health of the local watershed, necessary for sustainable economic growth. These programs are often support by some municipal funding as they benefit the watershed as a whole. Requiring agreements with municipalities for all such programs could be administratively burdensome for municipalities and CAs. It may also lead to inconsistent program delivery across the watershed if not all municipalities participate which may limit the effectiveness of some programs. • MECP has indicated that program changes would be implemented in 2022 budgets which means agreements with municipalities would need to be finalized by mid summer 2021.

<ul style="list-style-type: none"> ○ Through regulation, the province could prescribe program standards and requirements, or prescribe or limit the types of programs a CA can provide. 	<p>This is likely a tight timeline for municipalities and CAs. MECP had originally proposed a transition period of 18 months.</p>
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Budgets, Fees and Levies

Description of Key Amendments	Background and Municipal Considerations
<ul style="list-style-type: none"> • Through regulation, the province could govern the apportionment of a CA's capital costs • Through regulation, the province could govern the apportionment of a CA's operating expenses, the amount that municipalities are required to pay, and restrict and prohibit certain types of operating expenses • The Minister could make a regulation respecting the amount of any fee a CA charges, including the manner in which the fee is calculated 	<ul style="list-style-type: none"> • Currently, municipally-appointed CA Boards set operating and capital budgets and fee schedules. Budgets are transparent, showing how projects and programs will be funded. Draft budgets are circulated annually to all member municipalities for consultation, including the apportionment of capital and operating costs to municipalities. On average, municipalities provide CAs with 50% funding while the Province provides an average of 2 or 3 percent. CAs are also required to undertake an annual financial audit and audited financial statements are provided to municipalities, the province and posted on CA websites to ensure accountability and transparency.

Planning and Permitting

Description of Key Amendments	Background and Municipal Considerations
<ul style="list-style-type: none"> • CAs have been removed as a public body under the <i>Planning Act</i>. • Appeals under Section 28 now go to the Local Planning Appeal Tribunal (LPAT) instead of the Mining and Lands Tribunal. • The Minister may order a CA to issue or not issue a Section 28 permit. The Minister may review and overturn a CA's decision not to issue a permit or issue it with conditions. The Minister may issue a Section 28 permit without holding a hearing (similar to a 	<ul style="list-style-type: none"> • CAs will no longer be able to appeal <i>Planning Act</i> decisions to LPAT or become party to an appeal as a public body. CAs will have to operate through the provincial one window approach, with comments and appeals coordinated through MMAH, typically for the review of Official Plans and Official Plan Amendments. It is unclear if CAs will still be able to appeal <i>Planning Act</i> decisions that affect lands they own. • It is unknown if changing to LPAT for appeals will affect decisions or timelines. The Mining and Lands Tribunal had developed a deep

<p>Minister's Zoning Order applied by the Minister of Municipal Affairs and Housing). The Minister's decision may not be appealed.</p>	<p>understanding of Section 28 having worked with the CA Act for decades.</p> <ul style="list-style-type: none"> • Currently, if a CA refuses to issue a permit or issues one with conditions, applicants can appeal the decision to the CA's Executive Committee, followed by the Mining and Lands Tribunal followed by Ontario's courts. At each stage there is a hearing where evidence is presented, and a decision is made that is appealable to the next level. Should the Minister issue a permit, it is unclear if the Crown would have Crown immunity which could leave municipalities and/or CAs with liability.
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Members and Boards

Description of Key Amendments	Background and Municipal Considerations
<ul style="list-style-type: none"> • Board members must be municipal councillors • The Minister may appoint an additional member to a CA Board to represent the agricultural sector. • Members cannot serve as chair or vice-chair for more than two consecutive years. • Board members must "act honestly and in good faith and shall generally act on behalf of their respective municipalities" (initial amendment was "shall act honestly and in good faith with a view to furthering the objects of the authority"). • Through regulation, the province could require CAs to establish one or more advisory boards and could prescribe the composition, 	<ul style="list-style-type: none"> • Municipalities will no longer be able to appoint a member of the public as their CA member which may strain the capacity of some municipal councils. Also, the use of the term "municipal councillor" rather than "municipally elected official" may exclude Mayors from serving on CA Boards. • It is unknown if an agricultural representative would have the same voting privileges as a municipal member, be entitled to serve as chair or vice-chair or have a levy vote. It is understood that candidates would likely apply through the Public Appointments Secretariat. • Interest and availability amongst municipal councillors to fill the role of chair and vice-chair is unknown. It may be challenging to rotate this position every two years, especially on smaller Boards. There is also a learning curve in these roles that may favour the ability to serve a slightly longer term. Both positions are currently subject to re-election each year as members can only be elected chair and vice-chair for one year at a time.

Description of Key Amendments	Background and Municipal Considerations
<p>functions, powers, duties, activities and procedures of these advisory boards.</p>	<ul style="list-style-type: none"> <li data-bbox="792 327 1455 527">• The amendment requiring members to act on behalf of their respective municipalities contradicts the purpose statement in the Act as well as the fiduciary duty of Board Members to represent the best interests of the corporation they oversee. <li data-bbox="792 611 1455 810">• Like municipalities, CA Boards make decisions about the creation and operation of advisory boards based on the current nature and needs of their organization, programs and watershed. Ad hoc advisory boards are also sometimes set up to address specific projects or issues.

ATTACHMENT 2 PROPOSED RESOLUTION

“WHEREAS, the Province has introduced Bill 229, *Protect, Support and Recover from COVID 19 Act - Schedule 6 – Conservation Authorities Act*;

AND WHEREAS, municipalities believe that the appointment of municipal representatives on CA Boards should be a municipal decision; and the Chair and Vice Chair of the CA Board should be duly elected;

AND WHEREAS, changes to the legislation will create more red tape and costs for the conservation authorities, and their municipal partners, and potentially result in delays in the development approval process;

AND WHEREAS, municipalities require a longer transition time to put in place agreements with conservation authorities for non-mandatory programs;

AND WHEREAS, municipalities of the Mississippi River and Rideau River watersheds value and rely on the natural habitats and water resources within our jurisdiction for the economic health and well-being of residents and our communities;

AND WHEREAS, we rely on the watershed expertise provided by local conservation authorities to protect residents, property and local natural resources on a watershed basis by regulating development, undertaking watershed scale studies and planning, and engaging in reviews of applications submitted under the *Planning Act*.

NOW THEREFORE, BE IT RESOLVED,

1. THAT, the Province of Ontario delay enactment of clauses affecting municipal concerns;
2. THAT, the Province of Ontario provide a longer transition period up to December 2022 for non-mandatory programs to enable coordination of CA-municipal budget processes;
3. THAT, the Province of Ontario respect the current conservation authority/municipal relationships;
4. THAT, the Province of Ontario work with conservation authorities to address concerns by repealing and/or amending changes to the *Conservation Authorities Act* and the *Planning Act*;
5. AND THAT, the Province of Ontario hold meaningful public consultation on any future proposed changes to the *Conservation Authorities Act*.”