



**Grand River Conservation Authority  
Agenda - General Meeting**

Monday, November 23, 2020

9:30 a.m.

GRCA Zoom Virtual Meeting

Live Stream Link

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**Pages**

1. **Call to Order**
2. **Certification of Quorum**
3. **Declarations of Pecuniary Interest**
4. **Chair's Remarks on Proposed Amendments to the Conservation Authorities Act through Bill 229**
5. **Reports:**
  - a. **CAO Report - Proposed Amendments to the Conservation Authorities Act through Bill 229** 1

THAT Report Number GM-11-20-85 – Proposed Amendments to the Conservation Authorities Act through Bill 229 be approved,

AND THAT Grand River Conservation Authority Report GM-11-20-85 be submitted to the Premier, Ministers of Environment, Conservation and Parks, Natural Resources, Municipal Housing and Affairs and Finance, watershed MPPs and circulated to watershed municipalities.
6. **Adjourn**

**Regrets only to:**

Office of the Chief Administrative Officer, Phone: 519-621-2763 ext. 2200

# Grand River Conservation Authority

**Report number:** GM-11-20-85  
**Date:** November 23, 2020  
**To:** Members of the Grand River Conservation Authority  
**Subject:** Proposed Amendments to the Conservation Authorities Act through Bill 229

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## **Recommendation:**

THAT Report Number GM-11-20-85 – Proposed Amendments to the Conservation Authorities Act through Bill 229 be approved,

AND THAT Grand River Conservation Authority Report GM-11-20-85 be submitted to the Premier, Ministers of Environment, Conservation and Parks, Natural Resources, Municipal Housing and Affairs and Finance, watershed MPPs and circulated to watershed municipalities.

## **Summary:**

On November 5, 2020, through Bill 229 Protect, Support and Recover from COVID-19 Act (Budget Measures), the province introduced amendments to the *Conservation Authorities Act* (Schedule 6) and the *Planning Act*. If enacted, some changes will significantly impact the role of a conservation authority board to establish programs and services. As well, the proposed amendments will enable Regulations that will either limit or completely change the role of conservation authorities to protect Ontario's environment and ensure people and property are safe from natural hazards.

## **Report:**

### **Background:**

A provincial review of the Conservation Authorities Act has been ongoing since 2015. Amendments were approved in 2017, a minor change in 2018 and these were followed by further amendments in 2019. In 2019, the province indicated the proposed amendments were to help conservation authorities focus and deliver on the core mandate and to improve governance. The Grand River Conservation Authority (GRCA) provided comments on the Environmental Registry Posting through GM-04-19-41- Environmental Registry Posting 013-5018- Modernizing Conservation Authority Operations. The amendments were later passed through Bill 108, More Homes, More Choice Act. At that time, the scope of the changes to conservation authority board governance and composition; mandatory, municipal and other programs and services; natural hazard permits and other areas were to come out through various regulations.

In the fall of 2019, the Minister of Environment, Conservation and Parks (MECP) hosted meetings with each individual conservation authority (CA) to gain a better understanding

of the programs and services provided by each Authority. In the early winter of 2020, the MECP also hosted stakeholder consultation sessions across the province to gain feedback from the various groups, agencies and organizations who deal with, or work with CAs. The Vice-Chair and senior staff attended the South-western session and submitted formal written comments in response to questions posed by the MECP. MECP has confirmed that they received over 2,500 submissions in response to these consultation sessions; however, the results of these sessions have not been publicly shared.

## **Bill 229**

On November 5, 2020, the province introduced Bill 229 Protect, Support and Recover from COVID-19 Act which includes amendments to the Conservation Authorities Act (Schedule 6). The province identified these changes as necessary to improve transparency and consistency in conservation authority operations, strengthen municipal and provincial oversight and streamline conservation authority roles in permitting and land use planning.

While previously proposed changes to the Act have been posted to the Environmental Registry of Ontario (ERO) for a period of public comment; these new changes are posted on the ERO for information only. Under Section 33 of the Environmental Bill of Rights (1993), public consultation is not required if the proposal forms part of or gives effect to a budget or economic statement that is presented to the Legislative Assembly. It is anticipated that Bill 229 will be passed in the next few weeks as the legislature is due to rise on December 10<sup>th</sup>.

On November 9, 2020, MECP hosted an information session with all 36 Conservation Authority General Managers to provide additional information on the proposed amendments and timelines. MECP has indicated that regulations to implement the Act will be released for public comment in the coming weeks and a second set of regulations will be released for public comment in early 2021.

### **Proposed Amendments:**

Attached as appendix 1 is a summary chart of the proposed amendments to the Conservation Authorities Act and comments on the effects of those changes. This document was prepared by Conservation Ontario and circulated to the Board on November 13, 2020.

The changes to Conservation Authorities Act (CA Act) can be categorized into 5 sections:

- 1. Objects, Powers and Duties**
- 2. Regulatory**
- 3. Enforcement**
- 4. Governance**
- 5. Other**

Key changes to the Act under each of these categories are discussed below:

- 1. Objects, Powers and Duties**
  - Narrows the objects of a conservation authority from providing “programs and services designated to further conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals” (CA Act,

- s20(1)) to: (i) mandatory programs and services, (ii) municipal programs and services, and (iii) other program and services.
- A number of proposed clauses that would enable the Minister to make regulations that would prescribe standards and requirements for Municipal Programs and Services (i.e. Service agreements between municipalities and CAs) and Other Programs and Services (i.e. as determined by the Board and if municipal levy is used would require municipal agreements)
  - Proposed amendment of the *Planning Act* to include conservation authorities to subsection 1(2) which would remove CAs as a public body and name CAs under the one window approach of MMAH for the purposes of appeals only. This may remove conservation authorities, who are private landowners, from the right of appeal.
  - Removal of power for CAs to expropriate lands for existing and future projects

*GRCA Comments:*

The purpose of the Conservation Authorities Act remains the same. “The purpose of the Act is to provide for the organisation and delivery of programs and services that future the conservation, restoration, development and management of natural resources in watershed in Ontario.” 2017, c.23. Sched. 4, s.1. The objects within the CA Act have been amended to reflect the mandatory program and services that will be prescribed by regulations. At this time, it is anticipated that the changes to the objects would not impact the way in which the organization operates. In the next few weeks, the province has indicated that it will be releasing regulations that will further define the mandatory programs and services which could potentially have an impact on the scope and scale of current programs.

Although clauses related to non-mandatory programs already exist in the previously amended Act through Bill 108, the province has proposed additional wording that allows the Minister to dictate the standards and requirements for municipal or other programs and services agreed upon through service level agreements (non-mandatory programs). Historically, GRCA has negotiated directly with municipalities to tailor agreements to the need of the service for that specific municipality. Local autonomy in these program and services could be compromised with prescribed provincial standards and requirements. The non-mandatory, municipal and other local programs, do not receive funding from the province and through agreement, may be funded by municipal levy or other sources.

The proposed consequential changes to the Planning Act are still being clarified with the Ministry, however it is anticipated that it would remove conservation authorities ability to appeal a municipal planning decision to the Local Planning Appeal Tribunal (LPAT), unless it is through the Minister of Municipal Affairs and Housing. It is unclear if a conservation authority can participate in an appeal to support a municipality upon request or when this is included in an agreement between the conservation authority and municipality.

The ability to appeal is a tool that is a necessary but seldom used tool in our toolbox. The Ministry staff stated that this change only affects the role of the conservation authority in an appeal process and that participation in reviewing land use planning applications would still be occurring. Conservation Authorities participation in land use planning and the ability to appeal a decision ensures that key issues are identified and addressed early in the approval process so the landowner may proceed with other approvals such as the conservation authority permit in an efficient manner. It also ensures that the watershed lens is being applied to planning and land use decisions and

that people and their property in or near new development or redevelopment are protected from natural hazards such as flooding.

When necessary GRCA attends LPAT hearings to support the municipality and to ensure that policies and development conditions are imposed to reduce flood risks and to ensure mitigation and setbacks are in place to address other natural hazards such as erosion hazards or along the Lake Erie shoreline. Extreme weather events and changing climate increase the importance of our role in the planning process.

The 2019 Provincial Flood Advisor's report notes the important role that conservation authorities play in the land use planning process. The main legislative tools used to manage flood risk, the report states, include the Planning Act together with the Provincial Policy Statement (PPS) and the *Conservation Authorities Act*. As a result of the Flood Advisor's recommendations, the 2020 PPS was revised to state that mitigating natural hazard risks, including those associated with climate change, will require the province, planning authorities, and conservation authorities to work together. Similarly, the Made-in-Ontario Environment Plan asserts that within the context of environmental planning, conservation authorities' core mandate is protection from natural hazards and conserving natural resources.

Another significant concern is that this change may also remove our right to appeal planning decisions as a landowner. This is of significant concern as GRCA owns and manages over 48,000 acres of property throughout the watershed to support flood hazard management, maintain a reliable water supply, protect natural areas and biodiversity, provide community recreation and manage other environmentally sensitive natural lands. Conservation authorities are considered private lands (not public lands) and the potential removal of the right to appeal a land use planning decision is a significant concern.

The amendments to the Act also removes the ability to utilize the *Expropriation Act* for existing and future projects. MECP has recommended that should this be required for a CA project that the municipality or the province could expropriate the lands necessary.

## **2. Regulatory**

- Allow an applicant, within 120 days of a conservation authority receiving a permit application, to appeal to the LPAT if no decisions by the conservation authority has been made.
- Authorize the Minister of Natural Resources and Forestry to issue an order to take over and decide an application for a permit under section 28 of the Conservation Authorities Act in place of the conservation authority (i.e. before the conservation authority has made a decision on the application).
- Allows an applicant, within 30 days of a conservation authority issuing a permit, with or without conditions, or denying a permit, to request the minister to review the conservation authority's decision.
- Where the minister has taken over a permit application or is reviewing a permit decision by a conservation authority, allow an applicant to appeal directly to LPAT where the minister fails to make a decision within 90 days.
- In addition to the provision to seek a minister's review, provide the applicant with the ability to appeal a permit decision to LPAT within 90 days after the conservation authority has made a decision.

### *GRCA Comments:*

The proposed 120 day timeline for a CA to make a decision on permit applications may be problematic since there is no indication from the province when the 120 day timeline is triggered (submission of application) or if there will be a requirement for complete applications, etc.). There is a broad spectrum and complexity of applications in the files that CAs deal with and the majority of permits that are submitted with satisfactory construction or development plans and technical reports can be reviewed in a timely manner. For complex files, there may be additional time required for the applicant and/or their consultants to address GRCA technical comments on the proposal e.g. floodplain mapping analysis. The proposed timeline of 120 days for a decision oversimplifies the permitting process.

Over the past several years, and again in 2019 Conservation Ontario and CAs have worked with the province, AMO, landowners groups and the building industry to develop the recently CA wide adopted 'Client Service Standards for Conservation Authority Plan and Permit Review'. This document sets forth industry standards and procedures to ensure CA plan and permit review process are transparent, predictable and fair. GRCA permit application decisions are consistently made within the current client service standards. The current standards exclude the time period the applicant or their consultants are preparing responses to GRCA technical or policy comments which can take several weeks or in limited cases a few months.

The current appeal process for permits has been administered through the Mining and Lands Tribunal. With these proposed amendments, all permit appeals will be processed through LPAT. There is concern regarding the change in tribunals, the Mining and Lands Tribunal has the history and natural hazard technical experience in adjudicating Conservation Authorities Act cases for decades. Due to the volume of appeals at LPAT, it is anticipated that there could be lengthy delays for hearings and inconsistent decisions across the province. This also has the potential to redirect staffs' time to focus more on managing the appeal process for permit applications than what was previously required.

Under these proposed amendments, the Minister will be able to step in and take over the issuance or denial of a permit under Section 28 without consultation with the CA. A significant concern with this is a decision is made without watershed specific technical information required to make the decisions and the precedent that could be set for future application similar in nature.

Many of the amendments to this section of the legislation provide the Minister with significant additional powers to intervene in the permit process.

### **3. Enforcement**

- Eliminated the (not yet proclaimed) powers for officers appointed by conservation authorities to issue stop orders (CA Act provision 30.4)
- Clarified conditions for officers appointed by conservation authorities to enter lands without a warrant for the purposes of:
  - determining whether to issue a permit (amendment to unproclaimed CA Act provision 30.2(1))

- ensuring compliance with the prohibitions, regulations, or permit conditions, only when the officer has “reasonable grounds to believe that a contravention” (new CA Act provision 30.2(1.1))

*GRCA Comments:*

In previous updates to the Act, the province recognized that many compliance tools were outdated. The legislation prior to 2017 was not a deterrent for illegal activities and rapid response tools were not available to stop ongoing illegal activities. Although the fines have been substantially increased in 2017 (not yet enacted), the current proposal would remove a much needed compliance tool – the Stop (work) Order. The Made-In-Ontario Plan also recognized the role of conservation authorities in enforcement and it includes the provincial action “Work with municipalities, conservation authorities, other law enforcement agencies and stakeholders to increase enforcement on illegal dumping of excess soil.” Although not yet enacted, the Stop Order provision would have provided another tool to use when managing enforcement challenges and could have helped to avoid a time consuming and costly injunction process.

Obtaining injunctions takes further staff time and conservation authorities will incur significant costs for legal and court fees. Given the lack of provincial funding this cost will continue to be borne by municipalities and ultimately the taxpayers. The time needed to obtain such an order can be lengthy resulting in unnecessary and significant damage to the environment, impacts to natural hazard areas such as development in a floodplain which then puts people and property at risk.

Removing an officer’s ability to enter lands (s. 30.2) within the authority’s jurisdiction is inconsistent with similar municipal and provincial legislation. Coupled with the removal of a Stop Order provision (s. 30.4), these amendments do not afford officers an ability to “prevent or reduce the effects or risks” associated with illegal and egregious activities. Examples of other provincial legislation with Stop Orders include *Building Code Act* S.14, *Environmental Protection Act* S.8, *Planning Act* S. 49.

**4. Governance**

- Removing the power to define in regulation the composition, appointment or minimum qualifications for a Board member (S.40 (1)(a) and replaced it with:
  - Mandate that the municipal councillors appointed by a particular municipalities as members of a conservation authority be selected from that municipality’s own councillors only S.14 (1.1)
  - Enabling the Minister to appoint an additional member to the Board to represent the agricultural sector (new CA Act provision 14(4)).
- Limit the term of the Chair and Vice-Chair to one year and to no more than two consecutive terms (new CA Act provision 17 (1.1))
- Amending the duties of members to act on behalf of their respective municipalities rather than the Conservation Authority

*GRCA Comments:*

As previously mentioned in formal comments provided to the province in April 2019 and comments provided to the province during stakeholder consultation in 2020, the GRCA is supportive of changes that increase transparency and accountability of conservation authorities. GRCA is also supportive of the province’s intent to clearly define mandatory

programs and services provided by the conservation authorities and we look forward to the opportunity to provide input on the regulations that will be posted for public input.

There are a number of proposed amendments that require the posting of documents, board agendas and minutes, financial audits and standard accounting practices that are already undertaken by the GRCA.

Municipalities will no longer be able to appoint a member of the public to the Board. Over the years, the GRCA has benefited from having citizen appointments to the Board. This has helped to incorporate a diverse perspectives for watershed decision making. In order to ensure that a municipal Mayor may participate on a conservation authority board it is recommended that the specification of 'municipal councillor' in the proposed amendments be changed to "municipally elected official".

In the event that the Minister appoints a member to represent the agricultural sector, the appointment process has not been specified, and it is assumed that these appointments would have the same voting privileges as all members and would be entitled to receive per diems and to be appointed as the chair or vice-chair. It is unclear how the change to fiduciary duty would affect this member.

The current legislation deferred board composition to a future Regulation. The proposed amendment removed this clause and replaced it with clauses that specify who can be a members of the board so there will be no opportunity for further input on determining who is eligible to be a member of the Board.

The proposed amendments have set a limit to the Chair and Vice-chair to hold office for one year term and no more than two consecutive terms. Under GRCA By-law 3-2020, the by-law states, "The individuals elected shall hold office until their successors are elected and will be eligible for re-election to the same office for up to a maximum of five one-year terms."

Conservation Authorities are corporate entities. Good governance dictates that the Board acts on behalf of the organization and in the public interest. By changing the duty of members to act on behalf of their respective municipalities, it contradicts the concept of fiduciary duty of a Board Member to represent the best interests of the corporation they are overseeing. It puts an individual municipal interest above the broader watershed interests further to the purpose of the Act. The standards of care for directors are set out under the Business Corporations Act:

'Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall, (a) act honestly and in good faith with a view to the best interests of the corporation...; and (b) exercise the care, diligence and skill that a responsible prudent person would exercise in comparable circumstances'

Additionally, the Auditor General of Ontario recommended in their report on the Niagara Peninsula Conservation Authority that, " to ensure effective oversight of conservation authorities' activities through boards of directors, we recommend that the Ministry of the Environment, Conservation and Parks clarify board members' accountability to the conservation authority" to which the ministry response was in agreement.



## 5. Other

The amendments to the Act also include the requirement for a transition plan to be developed and implemented to ensure compliance with the regulations for mandatory programs and services and agreements or MOUs with municipal partners. Through discussions with MECP staff, it has been stated that the transition plan should be completed and implemented in time to support the 2022 budget process.

It has been GRCA's experience that it can take one to two years to negotiating and finalizing a municipal agreement or MOU given the complexity of the agreement and the number of stakeholders involved (municipal and CAs).

The development and implementation of the transition plan will require a change to GRCA's budget model, an assessment of all programs and services to ensure compliance with the regulations and development and negotiation with municipalities for MOU for non-mandatory programs and services (up to 26).

It is unknown when regulations will be posted for public input and approved.

### **Summary of GRCA Response to Proposed Amendments to the Conservation Authorities Act:**

- GRCA requests that the clause be edited to remove the ability for the Minister to prescribe standards and requirements for non-mandatory, municipal and local programs and services.
- GRCA requests that the amendment to the *Planning Act* be removed from Schedule 6 of Bill 229.
- GRCA requests that Bill 229 Schedule 6 clauses in S.28 be amended by removing references to LPAT and replacing it with the Mining and Lands Tribunal.
- GRCA requests that the existing unproclaimed clauses in the Conservation Authorities Act 2019 related to Powers of entry (30.2) and Stop Order (30.4) remain in the Conservation authorities Act and proposed amendments related to these clauses be removed from Bill 229 Schedule 6.
- GRCA requests that the wording for fiduciary responsibilities in the CA Act be amended back to: "Every member of an authority shall act honestly and in good faith with a view to furthering the objects of the authority."
- GRCA requests that a future regulation regarding the transition plan have an implementation date that is 18-24 months after the regulation is approved.

Most of the amendments proposed would be implemented through new or amended legal instruments or policies. The GRCA will contact MECP and MNRF to offer assistance and technical expertise on any working groups/technical committees established to review future changes to the regulations, policy and/or provincial standards related to the implementation of the *Conservation Authorities Act*.

### **Financial implications:**

Without the details of the proposed regulations, it is difficult to determine the financial implications for the amendments to the *Conservation Authorities Act*. Additional reports will come to the Board regarding updates to the program and services of the GRCA as they are posted to the Environmental Bill of Rights.

**Other department considerations:**

Operations, Administration, Resource Management and Engineering Divisions were consulted on the preparation of this report.

**Prepared by:**

Samantha Lawson  
Chief Administrative Officer

**Summary of Proposed Amendments to the *Conservation Authorities Act*  
& *Planning Act* through Bill 229 and Implications**

| Description of Proposed Amendments   | Implications to Conservation Authorities   |
|--|--|
| <p><b>Existing aboriginal or treaty rights</b></p> <p>Section 1 is amended to include a non-abrogation clause with respect to aboriginal and treaty rights.</p>  | <p><b>No concern.</b></p>  |
| <p><b>Members of authority</b></p> <p>Section 14 is amended to ensure that the members of a conservation authority that are appointed by participating municipalities are municipal councillors. The Minister is given the authority to appoint an additional member to a conservation authority to represent the agricultural sector. The powers to define in regulation the composition, appointment or minimum qualifications for a member of the Board have been repealed. The duties of a member are amended, every member is to act honestly and in good faith and shall generally act on behalf of their respective municipalities.</p> | <p><b>There may be a municipal concern.</b> Municipalities will no longer be able to appoint a member of the public to the Board and the specification of ‘municipal councillor’ rather than “municipally elected official” may exclude Mayors.</p> <p><b>There may be a municipal concern.</b> Should the Minister choose to appoint a member to represent the agricultural sector it is assumed that candidates would apply through the Public Appointments Secretariat. It is also assumed that these appointments would have the same voting privileges as all members and would be entitled to receive per diems and to be appointed as the chair or vice-chair.</p> <p><b>There may be a municipal concern.</b> There is no opportunity to manage these legislative amendments through the regulations process as Bill 229 has removed the ability to prescribe by regulation, the composition, appointment, or qualifications of members of CAs.</p> <p><b>Significant concern.</b> The amendment that would require members to act on behalf of their respective municipalities contradicts the fiduciary duty of a Board Member to represent the best interests of the corporation they are overseeing. It puts an individual municipal interest above the broader watershed interests further to the purpose of the Act.</p> |

| Description of Proposed Amendments   | Implications to Conservation Authorities  |
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| <p><b>Meetings of authorities</b></p> <p>Section 15 is amended to require that meeting agendas be available to the public before a meeting takes place and that minutes of meetings be available to the public within 30 days after a meeting. They are to be made available to the public online.</p>                             | <p><b>No concern.</b> CA Administrative By-Laws were completed by the December 2018 legislated deadline and, as a best practice, should already address making key documents publicly available; including meeting agendas and meeting minutes.</p>   |
| <p><b>Chair/vice-chair</b></p> <p>Section 17 is amended to clarify that the term of appointment for a chair or vice-chair is one year and they cannot serve for more than two consecutive terms.</p>   | <p><b>There may be a municipal concern.</b> Municipal Councillor interest and availability regarding this requirement is to be determined.</p>  |
| <p><b>Objects</b></p> <p>Section 20 objects of a conservation authority are to provide the mandatory, municipal or other programs and services required or permitted under the Act and regulations.</p>  | <p><b>No concern.</b> Previously the objects of an authority were to undertake programs and services designed to further the conservation, restoration, development and management of natural resources. This is still reflected in the Purpose of the Act. The objects now reference the mandatory and non-mandatory programs and services to be delivered. The “other programs and services” clause indicates that “an authority may provide within its area of jurisdiction such other programs and services as the authority determines are advisable to further the purposes of this Act”.</p> |
| <p><b>Powers of authorities</b></p> <p>Section 21 amendments to the powers of an Authority including altering the power to enter onto land without the permission of the owner and removing the power to expropriate land.</p>   | <p><b>No concern</b></p>  |
| <p><b>Programs and Services</b></p> <p>Section 21.1 requires an authority to provide mandatory programs and services that are prescribed by regulation and meet the requirements set out in that section. Section 21.1.1 allows authorities to enter into agreements with participating municipalities to provide programs and</p> | <p><b>Significant concern.</b> The basic framework of mandatory, municipal and other program and services has not changed from the previously adopted but not yet proclaimed amendments to the legislation. What has now changed is that municipal programs and services and other programs and services are subject to such standards and requirements</p>   |

| Description of Proposed Amendments  | Implications to Conservation Authorities  |
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| <p>services on behalf of the municipalities, subject to the regulations. Section 21.1.2 would allow authorities to provide such other programs and services as it determines are advisable to further the purposes of the Act, subject to the regulations.</p>  | <p>as may be prescribed by regulation. Potentially the regulations could restrict what the Authority is able to do for its member municipalities or to further the purpose of the Act.</p>  |
| <p><b>Agreements for ‘other programs and services’</b></p> <p>An authority is required to enter into agreements with the participating municipalities in its jurisdiction if any municipal funding is needed to recover costs for the programs or services provided under section 21.1.2 (i.e. other program and services). A transition plan shall be developed by an authority to prepare for entering into agreements relating to the recovery of costs. <i>*All programs and services must be provided in accordance with any prescribed standards and requirements.* NOTE- this new addition is addressed as a <b>significant concern</b> under Programs and Services above.</i></p> | <p><b>Potential concern.</b> This appears to be a continuation of an amendment previously adopted but not yet proclaimed. MECP staff indicate that the current expectation is that the plan in the roll-out of consultations on regulations is that the Mandatory programs and services regulation is to be posted in the next few weeks. It is noted that this will set the framework for what is then non-mandatory and requiring agreements and transition periods. MECP staff further indicated “changes would be implemented in the CA 2022 budgets” which is interpreted to mean that the Transition period is proposed to end December 2021. Subject to the availability of the prescribed regulations this date is anticipated to be challenging for coordination with CA and municipal budget processes.</p> |
| <p><b>Fees for programs and services</b></p> <p>Section 21.2 of the Act allows a person who is charged a fee for a program or service provided by an authority to apply to the authority to reconsider the fee. Section 21.2 is amended to require the authority to make a decision upon reconsideration of a fee within 30 days. Further, the amendments allow a person to appeal the decision to the Local Planning Appeal Tribunal or to bring the matter directly to the Tribunal if the authority fails to render a decision within 30 days.</p>   | <p><b>Some concern.</b> Multiple appeals of fees have the potential to undermine CA Board direction with regard to cost recovery and to divert both financial and staff resources away from the primary work of the conservation authority.</p>   |
| <p><b>Provincial oversight</b></p> <p>New sections 23.2 and 23.3 of the Act would allow the Minister to take certain actions after reviewing a report on an investigation into an authority’s operations. The Minister may order the authority to do anything to prevent or remedy non-compliance with the Act. The</p>   | <p><b>No concern.</b> This appears to be an expansion of powers previously provided to the Minister.</p>  |

| Description of Proposed Amendments  | Implications to Conservation Authorities  |
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| <p>Minister may also recommend that the Lieutenant Governor in Council appoint an administrator to take over the control and operations of the authority.</p>   |   |
| <p><b>Ministerial Review of Permit Decisions</b></p> <p>Subsection 28.1 (8) of the Act currently allows a person who applied to a conservation authority for a permit under subsection 28.1 (1) to appeal that decision to the Minister if the authority has refused the permit or issued it subject to conditions. Subsection 28.1 (8) is repealed and replaced with provisions that allow the applicant to choose to seek a review of the authority’s decision by the Minister or, if the Minister does not conduct such a review, to appeal the decision to the Local Planning Appeal Tribunal within 90 days after the decision is made. Furthermore, if the authority fails to make a decision with respect to an application within 120 days after the application is submitted, the applicant may appeal the application directly to the Tribunal.</p> | <p><b>Significant concern.</b> These amendments provide two pathways for an applicant to appeal a decision of an Authority to deny a permit or the conditions on a permit. One is to ask the Minister to review the decision; the other is to appeal directly to the Local Planning Appeal Tribunal. Appeals brought through these processes will create additional workload for the Authority and increase the amount of time that a permit appeal process takes.</p> <p>New guidelines will need to be created to support the Minister and the LPAT in their decision-making processes. There is no reference to a complete application being submitted prior to the 120 day “clock” being started.</p> |
| <p><b>Minister’s Order Re. S. 28 Permit</b></p> <p>New section 28.1.1 of the Act allows the Minister to order a conservation authority not to issue a permit to engage in an activity that, without the permit, would be prohibited under section 28 of the Act. After making such an order the Minister may issue the permit instead of the conservation authority.</p>  | <p><b>Significant concern.</b> These powers appear to be similar to a Minister Zoning Order provided for under the <i>Planning Act</i>. Should the Minister decide to use these powers it is appears that the CA may be required to ensure compliance with the Minister’s permit.</p>   |
| <p><b>Cancellation of Permits</b></p> <p>Section 28.3 of the Act is amended to allow a decision of a conservation authority to cancel a permit or to make another decision under subsection 28.3 (5) to be appealed by the permit holder to the Local Planning Appeal Tribunal.</p>   | <p><b>Some concern.</b> Some conservation authorities use the cancellation of a permit as part of their compliance approach; the ability to appeal to the LPAT will add 90 days to the process prior to a LPAT hearing taking place. Renders the tool ineffective if the permit holder decides to appeal.</p>   |

| Description of Proposed Amendments   | Implications to Conservation Authorities   |
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| <p><b>Entry Without Warrant, Permit Application</b></p> <p>Subsection 30.2 (permit application) of the Act sets out circumstances in which an officer may enter land within the area of jurisdictions of an authority. Those circumstances are revised.</p>                                      | <p><b>Some concern.</b> The changes are to amendments previously adopted but not proclaimed. For considering a permit application, the officer is now required to give reasonable notice to the owner <b>and</b> to the occupier of the property, which may result in increased administrative burden for the CA. It also appears to remove the ability to bring experts onto the site.</p>  |
| <p><b>Entry Without Warrant, Compliance</b></p> <p>Subsection 30.2 (compliance) of the Act sets out circumstances in which an officer may enter land within the area of jurisdictions of an authority. Those circumstances are revised.</p>  | <p><b>Significant/Some concern.</b> The revisions essentially undo any enhanced powers of entry found within the yet to be proclaimed enforcement and offences section of the Act. The result is that CAs essentially maintain their existing powers of entry, which are quite limited. Conservation authorities will likely have to rely on search warrants to gain entry to a property where compliance is a concern. Reasonable grounds for obtaining a search warrant cannot be obtained where the activity cannot be viewed without entry onto the property (i.e. from the road).</p> |
| <p><b>Stop (work) Order</b></p> <p>Section 30.4 of the Act is repealed. That section, which has not yet been proclaimed and which would have given officers the power to issue stop orders to persons carrying on activities that could contravene or are contravening the Act, is repealed.</p> | <p><b>Significant concern.</b> This is an important enforcement tool that conservation authorities have been requesting for years. Without this tool, conservation authorities must obtain an injunction to stop unauthorized activities which represents a significant cost to the taxpayers.</p>   |
| <p><b>Regulations Made By Minister and LGIC</b></p> <p>The regulation making authority in section 40 is re-enacted to reflect amendments in the Schedule.</p>  | <p><b>No concern.</b></p>  |
| <p>Throughout the legislation all references to the Mining and Lands Commissioner has been replaced with the Local Planning Appeal Tribunal</p>  | <p><b>Some concern.</b> The LPAT lacks the specialized knowledge that the MLT has with regard to S. 28 applications. There is also a significant backlog of cases at the LPAT.</p>   |

| Description of Proposed Amendments  | Implications to Conservation Authorities   |
|---|--|
| <p><b>Planning Act – Exclusion of CAs as Public Body</b></p> <p>Subsection 1(2) of the <i>Planning Act</i> is amended to remove Conservation Authorities as a public body under the legislation. Conservation authorities will not be able to independently appeal or become a party to an appeal as a public body at the LPAT.</p> | <p><b>Significant concern.</b> There is lack of clarity on the implications of this amendment.</p> <p>The intent of the amendment is to remove from conservation authorities the ability to appeal to LPAT any <i>Planning Act</i> decisions as a public body or to become a party to an appeal. Conservation authorities will instead be required to operate through the provincial one window approach, with comments and appeals coordinated through MMAH. Note that the one window planning system is typically enacted for the review of Official Plans and Official Plan Amendments. It is expected that conservation authorities will retain the ability to appeal a decision that adversely affects land that it owns however that has not been confirmed.</p> |