

November 19, 2020

**Mr. Micheal Di Lullo**

Chief Administrative Officer  
Municipality of Middlesex Centre  
10227 Ilderton Road  
Ilderton, ON N0M 2A0

**Via Email**

Dear Mr. Di Lullo:

On April 5<sup>th</sup>, 2019 the Ministry of the Environment, Conservation and Parks (MECP) posted proposals to amend the *Conservation Authorities Act* (CA Act) with the goal to encourage Conservation Authorities to focus and deliver on their core mandate, and to improve governance. The proposed changes were passed in June 2019 as part of Bill 108 *More Homes, More Choice Act*. The details of many of these changes were left to forthcoming regulations.

Kettle Creek Conservation Authority was actively involved in provincial consultation on the proposed CA Act changes with members attending multi-stakeholder consultations sessions in February 2020.

On November 5, 2020 the Province introduced Bill 229 *Protect, Support and Recover from COVID-19 Act* (Budget Measures). Schedule 6 contains proposed changes to the CA Act.

It is unclear how the changes included in Schedule 6 address issues or concerns raised during the February 2020 multi-stakeholder consultations. Moreover, it is difficult to fully contemplate the implications of the changes to KCCA, its member municipalities and the watershed community without the accompanying regulations.

Therefore, at its November 18, 2020 Full Authority meeting Kettle Creek Conservation Authority considered the proposed changes to the CA Act and the *Planning Act* included in Bill 229 and passed the following motion:

FA120/2020

**Moved by:** Grant Jones

**Seconded:** Alison Warwick

Whereas on November 5, 2020, the Province of Ontario introduced *Bill 229, Protect, Support and Recover from Covid-19 Act (Budget Measures)*, which proposes amendments to the *Conservation Authorities Act* in Schedule 6;

And whereas KCCA believes it has been working towards better accountability and transparency;

And whereas KCCA has concerns about the proposed changes as outlined in Conservation Ontario's "*Summary of Proposed Amendments to Conservation Authorities Act and Planning Act through Bill 229 and Implications*" dated November 11, 2020;

Therefore be it resolved that KCCA's Board of Directors request that the Province of Ontario remove Schedule 6 from Bill 229 and allow for more time for communication of the regulations and communication of how these proposed changes address issues raised in the February 2020 multi-stakeholder consultations.

**Carried**

For your benefit, Conservation Ontario's "Summary of Proposed Amendments to the *Conservation Authorities Act* and *Planning Act* through Bill 229 and Implications" dated November 11, 2020 is attached. Member municipalities will want to closely review amendments that would, if passed:

- No longer allow municipalities the ability to appoint a member of the public to the CA Board;
- Require members to act on behalf of their respective municipalities contradicting the fiduciary duty of a Board Member to represent the best interest of the CA and the watershed;
- Require agreements between CAs and municipalities for the delivery of non-mandated programs and services to be in place by the end of December 2021;
- Remove CAs as a public body under the *Planning Act*;
- Provide applicants with two pathways to appeal a decision of the Authority to deny a Section 28 permit or the conditions on a Section 28 permit.

KCCA is requesting that the Province of Ontario remove Schedule 6 from Bill 229 and allow for the time necessary to clearly explain the proposed changes, how they address issues raised in the February 2020 multi-stakeholder consultations, and provide member municipalities and CAs with the opportunity to review and comment on the yet to be released corresponding regulations. KCCA encourages our member municipalities to do the same.

Sincerely,



Stephen Harvey  
Chair  
Kettle Creek Conservation Authority

cc: Conservation Ontario

Attachment:

Conservation Ontario's "Summary of Proposed Amendments to the *Conservation Authorities Act* and *Planning Act* through Bill 229 and Implications" dated November 11, 2020

## 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>

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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>

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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 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 Minister may also recommend that the Lieutenant Governor in Council</p>	<p><b>No concern.</b> This appears to be an expansion of powers previously provided to the Minister.</p>

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<p>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 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>
<p><b>Entry Without Warrant, Permit Application</b></p>	<p><b>Some concern.</b> The changes are to amendments previously adopted but not proclaimed. For considering a permit application, the officer is</p>

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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.	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.
<b>Entry Without Warrant, Compliance</b> 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.	<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).
<b>Stop (work) Order</b> 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.	<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.
<b>Regulations Made By Minister and LGIC</b> The regulation making authority in section 40 is re-enacted to reflect amendments in the Schedule.	<b>No concern.</b>
Throughout the legislation all references to the Mining and Lands Commissioner has been replaced with the Local Planning Appeal Tribunal	<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.
<b>Planning Act – Exclusion of CAs as Public Body</b> Subsection 1(2) of the <i>Planning Act</i> is amended to remove Conservation Authorities as a public body under the legislation.	<b>Significant concern.</b> There is lack of clarity on the implications of this amendment.

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<p>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>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>